



Board of Health Agenda

Date: September 21, 2022

Time: 5:00 PM

Location:

1. Administrative

BOARD OF HEALTH MEETING AGENDA

Date: Wednesday, September 21, 2022

Time: 5:00pm

Location: Conducted by Remote Participation

In accordance with the Governor's Order Suspending Certain Provisions of the Open Meeting Law, G. L. c. 30A, § 20 relating to the COVID-19 emergency and subsequent [Act Extending Certain COVID-19 Measures Adopted During the State of Emergency](#), the September 21, 2022 public meeting of the Arlington Board of Health shall be physically closed to the public to avoid group congregation. The meeting shall instead be held virtually using Zoom.

Public access to this meeting shall be provided in the following manner:

Real-time public comment can be addressed to the Board of Health utilizing the Zoom virtual meeting software for remote participation. This application will allow attendees to request an opportunity for public comment, and allow the Board Chair to grant attendees the opportunity for public comment. Attendees can use either phone or computer to participate in the meeting. Public comment can also be sent in advance of the meeting by emailing the Board of Health at boh@town.arlington.ma.us by no later than 5pm on September 19, 2022. Submitted public comment will be read into the record at the appropriate points in the meeting.

Zoom Login instructions:

Instructions and the meeting link for this specific meeting can be found on the Board's agenda and minutes page or on the Town's meeting calendar. The meeting registration information is listed below. When attendees enter the meeting, they will be placed into a virtual waiting room. Attendees will be admitted into the meeting from the waiting room at the start of the meeting.

Please register in advance for this meeting:

https://town-arlington-ma-us.zoom.us/meeting/register/tZcuce2hpjsoH9JUEZyEUFzKz0Z7vuOubX_2

On this agenda:

2. Acceptance of Meeting Minutes from July 13, 2022
3. HEARING:
Variance Request - Hissho Sushi

4. HEARING:

Tobacco Violation - Dagg's Deli

5. HEARING:

Tobacco Permit - Galaxy Market

6. UPDATES:

Environmental Health

7. UPDATES:

Restaurants

8. UPDATES:

COVID-19 / Public Health Nurse

PUBLIC COMMENT

Adjourn



Town of Arlington
Department of Health and Human Services
Office of the Board of Health
27 Maple Street
Arlington, MA 02476

Tel: (781) 316-3170
Fax: (781) 316-3175

BOARD OF HEALTH MEETING MINUTES

Date: July 13, 2022

Time: 5:00 PM

Location: Conducted by Remote Participation

In accordance with the Governor's Order Suspending Certain Provisions of the Open Meeting Law, G. L. c. 30A, § 20 relating to the COVID-19 emergency and subsequent Act Extending Certain COVID-19 Measures Adopted During the State of Emergency, the July 13, 2022 public meeting of the Arlington Board of Health shall be physically closed to the public to avoid group congregation. The meeting shall instead be held virtually using Zoom.

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On this agenda:

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Board of Health shall be physically closed to the public to avoid group congregation. The meeting shall instead be held virtually using Zoom.

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Please register in advance for this meeting:

<https://town-arlington-ma-us.zoom.us/meeting/register/tZYufuCgqjwHtCOMZGzYaKdnv71MuVgVqia>

On this agenda:

1. Administrative

Natasha Waden provided the following opening statement: Good Afternoon, this is Natasha Waden, Public Health Director for the Town of Arlington. Consistent with the Governor's orders suspending certain provisions of Open Meeting Law and allowing us to adhere to social distancing requirements during the COVID-19 crisis, this Town of Arlington Board of Health Meeting is being held virtually via Zoom for audio and video participation of Board Members and the public. When you entered this meeting, you were automatically muted. During this meeting you will be unmuted individually as needed. These controls are in place to ensure that today's meeting is safe and effective. At this time, I would like to confirm that all members and persons anticipated on today's agenda are present and can hear me.

Board Members, when your name is called, please respond in the affirmative.

1. Dr. Marie Walsh Condon, Aye/Present
2. Dr. Kevin Fallon, Aye/Present
3. Dr. Laura White, Aye/Present

Health Department Staff, please respond in the affirmative when your name is called.

1. Laura Munsey, Aye/Present
2. Pat Martin, Aye/Present
3. Annette Curbow, Aye/Present
4. Cameron Bishop, Aye/Present
5. Sophie Mitchell, Aye/Present
6. Natasha Waden, Aye/Present

Applicants and representatives, do we have anyone on the call representing an application?

Davinder Sharma – Arlington Convenience

Samir Shaikh – Fenway Market

Jianguang Chen – Summer Sushi

Cynthia Kohn (re: 184 Westminster Avenue)

Scott Boccio, Esquire (re: 184 Westminster Avenue)

Catherine Downing and Eva Collins (re: 184 Westminster Avenue)

Maureen Buzby, Vendor for the Metro South-West (MSW) Tobacco-Free Collaborative

Others in attendance: None

Thank you everyone.

As stated, this Open Meeting of the Arlington Board of Health is being conducted remotely consistent with Governor Baker's Executive Order and subsequent Act of June 16, 2021, due to the current State of Emergency in the Commonwealth due to the outbreak of the COVID-19 Virus.

In order to mitigate the transmission of the COVID-19 Virus, the Town of Arlington has been advised and directed by the Commonwealth to suspend public gatherings, and as such, the Governor's Order suspends the requirement of the Open Meeting Law to have all meetings in a publicly accessible physical location. Further, all members of public bodies are allowed and encouraged to participate remotely.

The Order, which you can find posted with agenda materials for this meeting, allows public bodies to meet entirely remotely so long as reasonable public access is afforded so that the public can follow along with the deliberations of the meeting.

Ensuring public access does not ensure public participation unless such participation is required by law. This meeting will have multiple public comment periods – one during each of the hearings, and one at the end of the meeting. If you would like to comment during one of the public comment periods, please use the "Raise Hand" function if on a computer, or "Dial *9" if on the phone. When your name or phone number is called, and you are unmuted, please state your name and provide your comment. All attendees will be afforded 3 minutes for any comments. Applicants discussing hearing or variance will be allotted additional time.

For this meeting, the Board of Health is convening by telephone and computer conference via Zoom as posted on the Town's Website identifying how the public may join.

Only Health Department staff will be able to share their screen during this meeting. Board Members and Department Staff may be participating by video conference. Accordingly, please be aware that other folks may be able to see you. Anything that you broadcast may be captured by the recording.

All of the materials for this meeting are available on the Novus Agenda dashboard, and I recommend that Board Members and the public follow the agenda as posted on Novus unless otherwise noted. Members of the public are encouraged to provide written public comments.

Before we get to today's agenda, I am going to cover some ground rules for effective and clear conduct of our business and to ensure accurate meeting minutes.

Dr. Marie Walsh Condon, the Board Chair, will introduce each agenda item. After the item is presented, she will go down the list of Board Members, inviting each by name to provide any comment, questions, or motions. Please hold comments or questions until your name is called and you are unmuted. For any response, please wait until the Chair yields the floor to you, and state your name before speaking.

Finally, each vote taken during this meeting will be conducted by roll-call vote.

Dr. Walsh Condon, can you please now review today's agenda. Floor yielded to Dr. Marie Walsh Condon.

Dr. Walsh Condon welcomed everyone to today's Board of Health meeting.

2. Acceptance of the June 22, 2022 Meeting Minutes

Comments: No Comments by Dr. Fallon or Dr. White.

Motion made by Dr. Kevin Fallon to approve the June 22, 2022 meeting minutes as submitted.

2nd by Dr. Laura White

A roll-call vote was called

- Dr. Marie Walsh Condon, Aye
- Dr. Kevin Fallon, Aye
- Dr. Laura White, Aye

Approved (3-0) Unanimous

3. Hearing: Tobacco Violation – Arlington Convenience

Inspector Martin informed the Board that on June 26, 2022, Maureen Buzby, a vendor for the Metro South-West (MSW) Tobacco-Free Collaborative, conducted tobacco compliance checks at several permitted retail tobacco establishments in town. Inspector Martin reported that Arlington Convenience sold a package of Newport Red cigarettes to an underage individual at approximately 11:18 a.m. This violation represents the second violation within a 36-month period for Arlington Convenience. In the case of a 2nd violation they have been issued a fine of \$2,000 and suspension of permit for 14 Days.

Floor yielded to Maureen Buzby.

Ms. Buzby reported that, as is customary, an FDA trained youth (19 yo female) entered Arlington Convenience at 11:18 am and asked to purchase a package of Newport Reds. She was not asked to show an I.D.

Floor yielded to Davinder Sharma of Arlington Convenience who reported he is sorry this violation happened a second time. The establishment makes no excuse. All employees are trained, but staff turns around quickly, and this time it slipped. To prevent this from happening Mr. Sharma stated that every month they will send a reminder with payroll, and add a poster at the register facing the cashier, and add additional signage that customers under 30 expect to show identification.

Dr. Marie Walsh Condon believes this is a good idea for all measures noted, and stated they are thinking outside the box to ensure this doesn't happen again.

Dr. Fallon commented that he likes the attitude of the owner and representative and is making it more difficult for under age people to buy, and will provide additional training for employees. Dr. White echoed the same comments.

Public Comment: Ms. Maureen Buzby reported one of the changes in the new law by Governor Baker in December of 2019 is that now "under state law" all tobacco customers need to be carded. If there is any signage added it should say "all customers" need to be carded.

Inspector Martin recommends the Board upholds the violation.

Motion made by Dr. Marie Walsh Condon to uphold the violation as written, with a start date that will be worked out between the retailer and the Health Department.

2nd by Dr. White

Vote:

Dr. Marie Walsh-Condon, Aye

Dr. Kevin Fallon, Aye

Dr. Laura White, Aye

Approved (3-0) Unanimous

4. Hearing: Tobacco Violation – Fenway Market

Inspector Martin informed the Board that on June 26, 2022, Maureen Buzby, a vendor for the Metro South-West (MSW) Tobacco-Free Collaborative, conducted tobacco compliance checks at several permitted retail tobacco establishments in town. Inspector Martin reported that Fenway Market sold a package of Newport Red cigarettes to an underage individual at approximately 11:06 a.m. This violation represents the first violation within a 36-month period. This violation carries a \$1,000 fine and 7 day suspension of permit.

Floor yielded to Maureen Buzby who informed the Board that the same buyer, on same day, purchased a package of Newport Reds without being asked for an I.D.

Floor yielded to Samir Shaikh of Fenway Market. Samir reported he had no help for the day and had his Niece who was visiting from India working the counter for the first time and was only

there for a couple of days and she made the mistake. He reported that he, as the owner, was out of state that day, and had no additional coverage in the store.

Dr. Walsh Condon asked what they planned to do in the future so this doesn't happen again. Samir reported that he is there almost all of the time and has never had a violation. Dr. Walsh Condon acknowledged it is difficult on retailers to have help other than themselves, and we recognize the hardship.

No additional questions or comments by Dr. Kevin Fallon or Dr. Laura White.

A recommendation was made by Inspector Martin to uphold the violation as submitted.

Motion made by Dr. Marie Walsh Condon to uphold the violation as written, with a start date that will be worked out between the retailer and the Health Department.

2nd by Dr. Kevin Fallon

Vote:

Dr. Marie Condon Walsh, Aye

Dr. Kevin Fallon, Aye

Dr. Laura White, Aye

Approved (3-0) Unanimous

5. Hearing: Variance Request – Summer Sushi

Inspector Curbow informed the Board that Mr. Chen of Summer Sushi has applied for a variance in accordance with Food Code 3-502.11. Summer Sushi intends to use acidification, through the use of a vinegar solution, to render cooked rice a non-time/temperature control for safety (non-TCS) food. The variance request was accompanied by the required Hazard Analysis and Critical Control Points (HACCP) plan. The review of the plan was complete and accurate capturing all critical points addressed in the plan. A rice sample has been validated by Foods Research Laboratories in Boston with a pH level of 3.85, less than the target of 4.1.

The floor was yielded to Jianguang Chen who stated at Summer Sushi they provide fresh food every day and their food and sushi rice is prepared daily. If the pH should change at all during the day (i.e. after lunch or later in the day), and the pH level should go over 4.1 they would discard the rice and re-cook fresh. He further reported that nothing is kept overnight, and everything is provided fresh daily. Dr. Walsh Condon asked about Mr. Chen's experience utilizing this protocol, and he stated he has over 5 years' experience at a Japanese restaurant where he worked from Waiter to Kitchen and has extensive experience in all aspects of the restaurant business. He is excited for this opportunity to have his own place and is confident in his abilities.

Dr. Fallon commented that everything is in order, and Dr. Laura White commented that the application and presentation were very detailed.

Inspector Curbow recommends the Board approves the application for a variance request.

Motion made by Dr. Walsh Condon to approve the variance request of Summer Sushi located at 474 Massachusetts Avenue to use acidification through the use of a vinegar solution, to render cooked rice a non-time/temperature control for safety (non-TCS) food.

2nd By Dr. Laura White

Vote:

Dr. Marie Walsh Condon, Aye

Dr. Kevin Fallon, Aye

Dr. Laura White, Aye

Approved (3-0) Unanimous

6. Hearing: Housing Code Violation – 184 Westminster Avenue

Inspector Bishop reported that on May 18th the Health Department along with the Inspectional Services Department conducted an inspection at 184 Westminster Ave #1, at the request of Catherine Downing and Eva Collins. The inspection revealed the ceiling height was below the housing requirement of 7 feet. The Building Department made additional observations and they were going to conduct their own investigations/inquiries. The violation of ceiling height was listed in an order letter dated June 2, 2022 and sent to the property owner Cynthia Kohn via certified mail. Ms. Kohn sent an email to the Health Department that was received June 15, 2022, requesting a hearing with the Board of Health to appeal the violation. The request for a hearing was received within 7 days of notification, in fact was submitted the same day. Inspector Bishop stated he is looking to the Board to review the information and for a determination of the next steps to take.

The floor was yielded to Attorney Scott Boccio, representative for Cynthia Kohn. Attorney Boccio stated Inspector Bishop has been very helpful in the process regarding a resolution. In regards to the ceiling height, he reported they did reach out to a few home builders and were awaiting written estimates, but one verbally quoted costs of \$50,000 to \$100,000 to renovate the unit. Attorney Boccio stated it is only 1 room in question, which is not a bedroom or kitchen, and is a hallway. He also stated there were concerns regarding a zoning matter. He stated he had confirmation from Mary McMakin of the Assessor's Office that the house is taxed as a 2-family structure. He stated his client is a working single mother relies on this rental income, and who has lived in this home for 30 years, and she is now contemplating moving, and they are asking the Board to grandfather this property as a 2 family structure, as it is listed in the data-base since 1992.

The floor was yielded to Cynthia Kohn, property owner of 184 Westminster Avenue. Ms. Kohn reported that when she bought the house 30 years ago it had a tenant in the building, and it has been rented out the entire time she has lived there. She reported the current tenant was smoking, and when confronted about the smoking, she retaliated and went to the town. Ms. Kohn stated she assumed this was a legal apartment because when she bought the property there was a tenant already in the unit, and there was an inspection and there was no mention of ceiling height.

The floor was yielded to Eva Collins, who was accompanying her mother Katherine Downing at the Hearing. They reported that the accusation of smoking was unfounded, and Ms. Downing went to the Court, Police Department, and Fire Department, because she was not only accused of smoking in the unit, which she reported she was not, but also was accused of removing smoke detectors. She reported when she went to the Health Department, she knew nothing about the ceiling height or town regulations. Ms. Collins reported they have received 5 eviction notices, only one of which was from the court. They reported they have video of Ms. Kohn entering their apartment illegally, when no one was home because her mother got a text that the owner reported the smell of smoke. They stated they knew she had been entering the apartment when no one was home and put in cameras to document this. The video of illegal entry and police report were also sent to Inspector Bishop.

Director Waden made a Point of Order, stating the purpose of today's Hearing is to determine whether or not there is a violation of the State Sanitary Code and the request to grandfather in the property as a 2-family structure does not fall within this Board's or Department's purview.

The only option that could be foreseen is to request a variance.

Dr. Fallon – stated it is not within our department to determine the zoning of the building as a two family. The owner has been renting this property for 30 years, but the Health and Safety of tenants is why the rules and regulations are in place and if it is lower than 7 feet it is a violation of the Housing Code. We need flexibility to protect both the owner and the occupants and may need some additional guidance and information.

Dr. White – We don't want tenants in unsafe settings, but some information is unclear and would appreciate some guidance and recommendations. Dr. White inquired if the 7 foot height violations are throughout the entire unit. Inspector Bishop reported several measurements were less than 7 feet. Inspector Bishop stated no parts measured were either meeting or over the 7 foot ceiling height requirement.

There may be the potential for an option to apply for a variance from the State Sanitary Code for this issue, and we would need to look into whether or not the owner could apply for a variance, but that has not yet been seen by the Board in 25 years.

Director Waden recommends that the owner and attorney work with Inspectional Services to determine if this is a legal 2 family unit, then we can look out to the State regarding the potential for a variance on our end. We are not yet prepared to present this evening what that would look like.

Cynthia Kohn stated she believes only 1 room in the apartment is not 7 feet. Other parts of the apartment are not below 7 feet.

Public Comment: None

Floor yielded to Attorney Boccio who requested another inspection to check the entire apartment regarding ceiling height, but would like clarification as to which rooms are less than 7 feet. He additionally inquired as to what year the non-conforming law came into existence.

Given the amount of undetermined information needed to make a decision Dr. Marie Walsh Condon would like to table this matter until a future meeting.

Director Waden would like to offer a new recommendation that the Health Department staff work with the property owner, attorney, and inspectional services, to determine if this is indeed zoned as a 2-family structure. Within the next 30 days we will work to resolve this issue and determine whether or not the owner would need to apply for a variance for this order.

Motion made by Dr. Marie Walsh Condon to table this hearing to a future meeting, if this matter cannot be resolved by the parties involved.

2nd by Dr. Kevin Fallon

Vote:

Dr. Walsh Condon, Aye

Dr. Fallon, Aye

Dr. White, Aye

Approved (3-0) Unanimous

7. Updates: Environmental Health.

Inspector Martin attended a status hearing update regarding 1530 Mass Ave and the judge granted a motion for the son to intervene and he is now a defendant in the case and they were granted additional time to bring this property into compliance. Prior to the next hearing they need to bring into compliance the driveway, egress, and kitchen areas.

Next hearing is scheduled for July 28th and Inspector Martin will be in attendance provide an update at next meeting

Arlington Conservation Commission has approved a Copper Sulfate treatment for Spy Pond on July 15th to assist control Algae growth in Spy Pond.

The staff is continuing to monitoring water bodies in Arlington and issuing any advisories if there are any harmful algae blooms are detected.

No Questions or Comments.

8. Updates: Restaurant Updates

Inspector Martin informed the Board there is a new restaurant in town: Makalu Nepali & Indian Cuisine who took over the former Sabzi location at 352 Massachusetts Avenue.

Szechuan's Dumpling is under new management.

A Plan Review for Tai Moon was submitted and we will be happy to see them back in business after the fire.

9. Updates: COVID-19/Public Health Nurse Updates

Director Waden once again thanked Nurse Kerr for all she has done for the Department and she will be missed as she starts her new position at Harvard University.

Director Waden provided a few Covid updates.

In Arlington:

- April: 443 Confirmed Cases
- May: 149 Confirmed Cases
- June: 69 Confirmed Cases
- July to date: 14 Confirmed Cases

Numbers have been good. There is nothing new or remarkable to report on regarding hospitalization rates.

1st Dose Vaccination for age 0-4 year olds:

- Arlington: 22%
- Middlesex County: 8%
- State: 5%

Total number boosted:

- Arlington: 63%
- Middlesex County: 60%
- State: 58%

Arlington Health Department is no longer doing formal booster clinics, but the Council on Aging is doing home visits for seniors, and for other residents they are recommending other locations for booster shots such as pharmacies, etc.

The State will change the way they reports out Covid cases, and will no longer be reporting daily, but rather weekly. Arlington will mirror that change.

The Health Department has acquired Home Test Kits, and we are in the process of distributing these to various locations throughout town.

The Health Department continues to provide testing 1 time per week on Tuesdays from 9 – 10.

Regarding other Public Health Nurse Updates – Surveillance continues for Triple E and West Nile Virus with currently no positive human or animal cases in Arlington, and only 1 positive in Bristol County. Typically this time of year we see more positive pools.

Regarding Monkey Pox, Nurse David Neylan has been following 42 cases in MA of monkey pox, and a contact tracing is happening for contacts. The State Department of Public Health is monitoring this matter, and there is a vaccine available but only for limited at risk individuals. Isolation is 2-4 weeks. Currently no quarantine requirements and the state follows up for 21 day contact monitoring.

The Public Health Nursing position was posted last week and the position is now a Public Health Nurse Supervisor position with the opportunity to be a full time position.

Discussion was held regarding the summer meeting schedule and due to conflicts the August meeting will be cancelled. Next scheduled meeting is September 21, 2022

Director Waden wanted to publically thank Dr. Kevin Fallon for his time on the Board and appreciated his service and wanted him to know how much he will be missed. Dr. Marie Walsh Condon also thanked Dr. Kevin Fallon for his time on the Board. She stated we will miss him very, very much. He is retiring at the end of the year from his practice and deserves a long, healthy, and happy retirement.

Director Waden notified the Board that the Governors order regarding open meeting laws and remote meeting options is set to expire on Friday the July 15, unless otherwise extended. Additional updates will follow at the September meeting.

PUBLIC COMMENT

Marie Walsh opened the floor to Public Comment: None

Motion to adjourn made at 6:00 pm by Dr. Fallon.

2nd by Dr. Marie Walsh Condon

A roll-call vote was called by Dr. Marie Walsh Condon:

Dr. Marie Walsh-Condon, Aye In Favor

Dr. Kevin Fallon, Aye In Favor

Dr. Laura White, Aye In Favor

Approved (3-0) Unanimously

Meeting adjourned



Town of Arlington
Department of Health and Human Services
Office of the Board of Health
27 Maple Street
Arlington, MA 02476

Tel: (781) 316-3170
Fax: (781) 316-3175

Memo

To: Board of Health Members

From: Cameron Bishop, Health Compliance Officer

Date: September 8, 2022

RE: Hissho Sushi (905 Massachusetts Ave in Stop and Shop #776) – Variance Request

Summer Sushi has applied for a variance in accordance with Food Code 3-502.11. The establishment intends to use acidification, through the use of a vinegar solution, to render cooked rice a non-time/temperature control for safety (non-TCS) food. The variance request was accompanied by the required Hazard Analysis and Critical Control Points (HACCP) plan, which follows for your review. A rice sample has been validated by Advanced Food Labs Inc. in Chelsea, MA with a pH of 3.97, less than the target of 4.1.



Town of Arlington

Office of the Board of Health

27 Maple St

Arlington, MA 02476

To whom it concerns,

July 8, 2022

This letter serves as Lwin Family Company, LLC dba Hissho Sushi's formal request for variance. Specifically, our request is in regard to a specialized process as referenced in the attached Rice Preparation SOP.

Hissho Sushi is a retail sushi provider requesting the use of the food additive vinegar in order to utilize pH as a control for public safety instead of time or temperature as is prescribed by the current provisions of law. We plan to acidify our white sushi grain rice with 2.5% acidity vinegar as a method of pathogenic control as per the recipe included in the attached SOP. This method reduces the pH of our rice to 4.1 or below, which is an unfavorable environment for pathogenic growth (like that of *B. cereus*) and allows us to safely store and handle the rice at room temperature for up to 24 hours. This method has been analyzed by a laboratory authority (please see attached lab report) to verify that the recipe will not create a public health hazard or nuisance, and we independently verify these results at the start of each calendar year to reaffirm its efficacy.





of this variance will allow us to offer the same safely consumable product without the financial burdens of time or temperature controls.

This request is applicable only for our white, sushi grain rice. Brown rice, multigrain rice, and quinoa available in some of our rolls are seasoned with the vinegar mixture for flavor, but are cold-held for pathogenic growth control.

The full methodology for our acidification process, as well as our current independent lab testing results can be found along with this letter. If you have any questions about our process, or if you need anything further from the Hisso team as you complete your review, please feel free to reach out to me via email at compliance@hisshosushi.com or by phone at 704-926-2200. We look forward to completing this licensing process with you!

NICOLE IPPOLITO | Permitting Coordinator

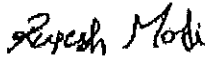

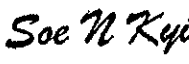

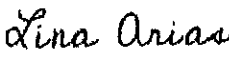
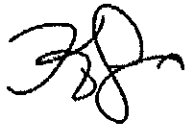


11949 Steele Creek Rd. Charlotte, NC 28273
P. 704.926.2200 | www.hisshosushi.com

HACCP Plan

I. Program Overview

Hissho Sushi's* 2022 HACCP plan was reviewed and validated on December 16, 2021, for the fiscal year of 2022 by the below members to ensure accuracy of the plan. This plan will be reviewed annually.

HACCP Team Member	Title	Signature	Qualification
Rupesh Modi	Sr. Director of Food Safety & Compliance		Seafood HACCP Certified
Kritika Shakya	Food Safety & Compliance Manager		Seafood HACCP Certified
Soe Naing Kyi	VP of Operations		Seafood HACCP Certified
Hsiao Wen	Director of Franchise Relations		Seafood HACCP Certified
Lina Arias	Sr. Logistics Manager		Seafood HACCP Certified
Kristen Saniga	Vendor Food Safety & Compliance Manager		Seafood HACCP Certified

Effective Date: 5/5/2022

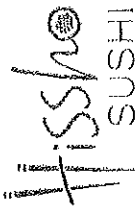
Review By: 1 Year

Approved BY: Sr. Director of Food Safety & Compliance

Document ID: FSQ.118. P.R.03

*As used in this document, "Hissho" means Hissho, Oumi, Sushi with Gusto and any other branded restaurant to which a copy of this policy has been provided.

Contents of this document, and any parts thereof, are confidential and trade secret, the sole property of Hissho International, LLC and/or Lwin Family Co, LLC* (collectively "Hissho") and are not to be copied or duplicated in any form without the express written permission of Hissho



HACCP Plan: Prepare and Distribute Sushi Process HACCP

Product Description

Describe Product:

Raw and/or pre-cooked seafood, with or without raw vegetables, with or without sauces, with acidified rice, with or without wrapper

Describe Packaging:

Sushi rolls are placed in plastic tray and covered with an oxygen permeable lid

Shelf Life, at What Temperature:

24 HR. Shelf life at 41°F or less

Product Characteristics:

Short shelf life, fresh, raw and/or cooked ingredients

Labeling Characteristics:

See sample label in supporting documents

Ingredients/Raw Materials:

See label ingredients in supporting documents

Special Flavorings and Toppings:

Depends on variety, see label ingredients in supporting documents

Distribution Controls:

Directly to general public in refrigerated display case or non-refrigerated vehicles with coolers and non-toxic ice blankets

Intended Use

Product Use:

Sushi Rolls are prepared products (ready-to-eat) to be consumed raw

Intended Consumer:

General Public

Method Sold:

Retail, out of display case in covered plastic trays

Consumer Expectations:

Fresh raw and/or cooked ingredients with acidified rice

Effective Date: 5/5/2022

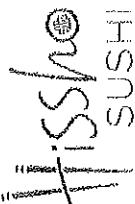
Review By: 1 Year

Approved BY: Sr. Director of Food Safety & Compliance

Document ID: FSQ.118. P.R.03

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Product Description: Prepare and distribute sushi process										
Method of Storage and Distribution: Stored and distributed refrigerated in oxygen permeable packages										
Intended Use & Consumer: Prepared product, ready-to-eat, to be consumed by general public										
Firm Name: Hissho Sushi	Critical Control Point (CCP)	Significant Hazard(s)	Critical Limits for each Control Measure	Monitoring			Who	Corrective Action	Verification	Records
				What	How	Frequency				
	Rice Acidification	Pathogenic bacteria growth – temperature abuse. (Bacillus cereus)	pH of rice is 4.1 or less	pH of rice after mixing with vinegar	pH meter	Each batch after acidification	Trained sushi chef or employee	If the pH is not 4.1 or less, then add more vinegar and re-check the pH. Evaluate rice acidification formula to prevent future recurrences	pH meter is calibrated once a day or when dropped. pH of rice is recorded for each batch daily and recorded on the Sanitation – Operation Log. The pH will be recorded in the pH log section by sushi chef and reviewed monthly by Hissho Mgmt.	Sanitation – Operation Log / Lab validation updated annually or when recipe changed
	Cooling	Pathogenic bacteria growth – temperature abuse.	Internal temperature of 41°F / 5°C or less within 4 hours.	Product temperature	Probe – type thermometer	Every batch	Sushi Chef	If product temperature is >41°F / 5°C after 4 hours, discard	Cooling Log section of Sanitation – Operation Log reviewed monthly by Hissho Mgmt.	Sanitation / Operation Log

Effective Date: 5/5/2022

Review By: 1 Year

Approved BY: Sr. Director of Food Safety & Compliance

Document ID: FSQ.118. P.R.03

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Rice Preparation

I. Purpose & Definition

The purpose of this document is to detail the recipes and preparation procedures Hissho utilizes to limit the potential for bacterial growth in our sushi rice, guaranteeing consistently safe, quality product for consumers.

II. Program Overview

1. Preparation of Sushi Rice

a. Required Materials

- i. Rice Cooker (Thunder Group Inc. SEJ-50000T)
- ii. Rice Paddle
- iii. Rice Net
- iv. Scoop
- v. Large Bin Container
- vi. Measuring Cup
- vii. pH meter
- viii. Two (2) 2 oz. cups
- ix. Scale
- x. Rice
- xi. Hissho Sushi Sushi Seasoning (2.5% acidity)
- xii. Distilled Water
- xiii. Tap Water

b. Method

- i. The table below outlines the procedure for making and acidifying white or brown rice used in company's products.

Effective Date: 1/03/2022

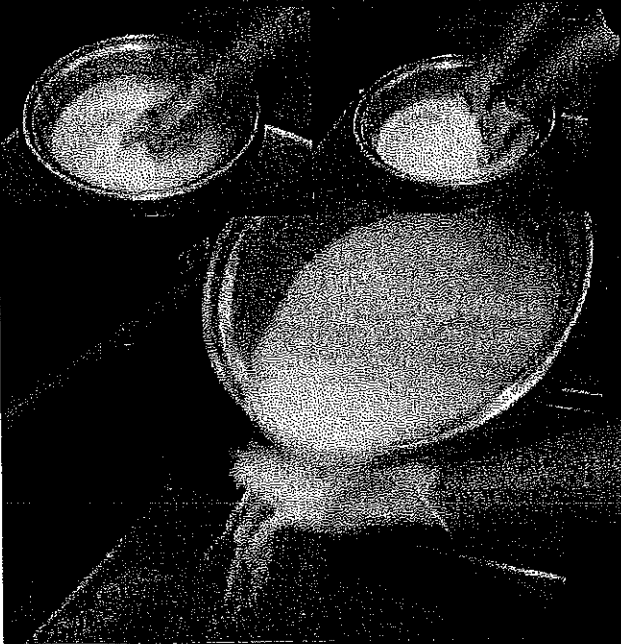
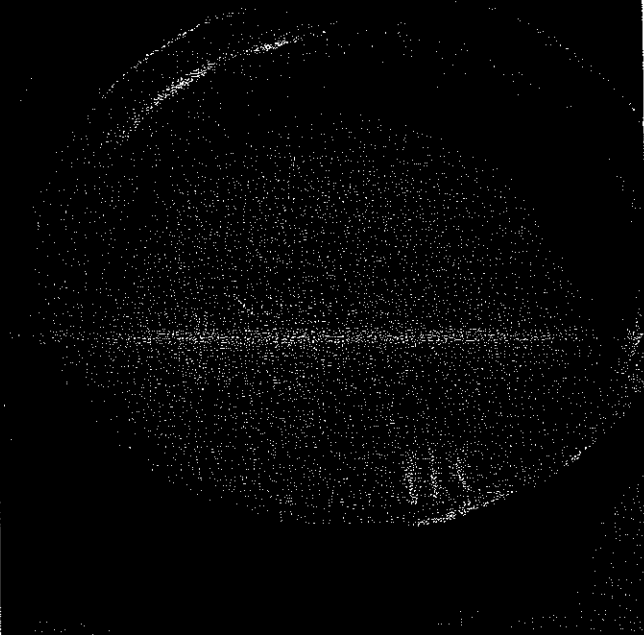
Review By: 1 Year

Approved BY: Sr. Director of Food
Safety & Compliance

Document ID: FSQ.019.P.R.02

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Step 3	
	Wash rice three (3) times by partially filling the pot each time, inspecting for physical contaminants, and agitating with clean hands before draining
	Why?
	Inspecting and cleaning the rice removes debris that may be present prior to cooking.
Step 4	
	Place pot onto scale and add 8 lbs. of water from a potable water source, taking into account the water added during the washing process. The total weight of the rice and water should be 15 lbs.
	Why?
	Weight is used instead of volume for a more accurate recipe.

Effective Date: 1/03/2022 Review By: 1 Year	Approved BY: Sr. Director of Food Safety & Compliance	Document ID: FSQ.019.P.R.02
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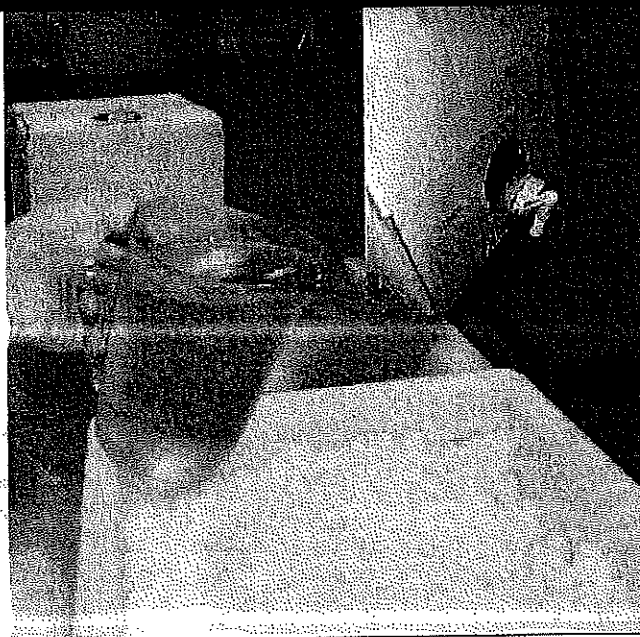
Step 7

Use rice paddle to empty the cooker into the rice container. The layer of rice in the container should be less than approximately 2 inches in depth.

Why?

Placing the rice in a large container speeds the cooling process and makes it easier to mix the sushi seasoning into the rice.

Step 8



Measure 32 oz. of Hissho Sushi Seasoning (2.5% acidity) and pour evenly over rice.

Why?

32 oz. of seasoning is added to acidify the rice and add flavor. More seasoning may be added if the target pH ≤ 4.1 is not reached.

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Step 11

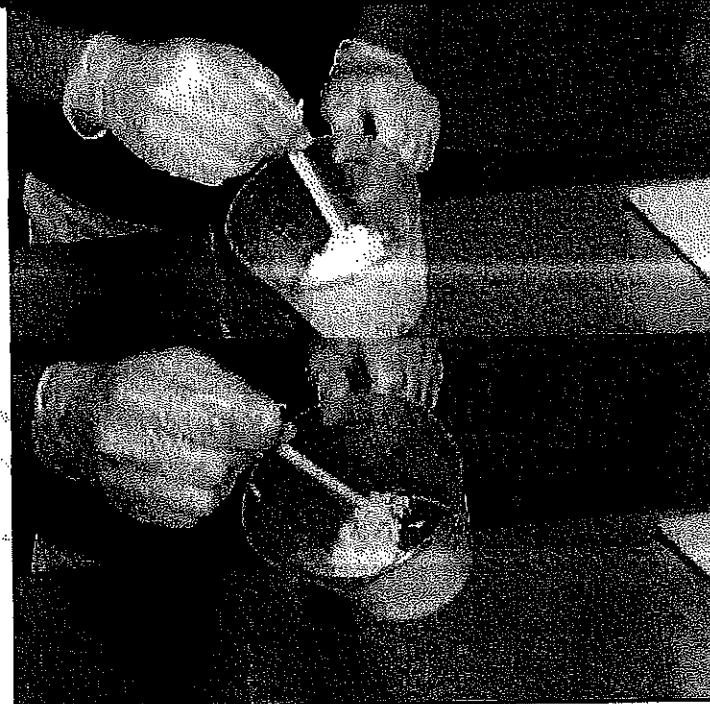


Fill a separate 2 oz. container with 5 small rice samples from the rice container. Samples should be taken from each corner and the center of the rice container.

Why?

Taking rice from several different areas of the container will provide a representative sample for a more accurate pH reading.

Step 12



Mix 2 parts distilled water with 1 part rice** with a chopstick or other clean utensil to create a slurry.

★ Some health departments require the use of a blender instead of mixing this slurry manually. Chefs or employees should reach out to their Regional Manager to check if a blender is required at their store.



Why?

Two parts liquid to one part rice** are mixed to create a liquid that can be tested for its pH.

Effective Date: 1/03/2022

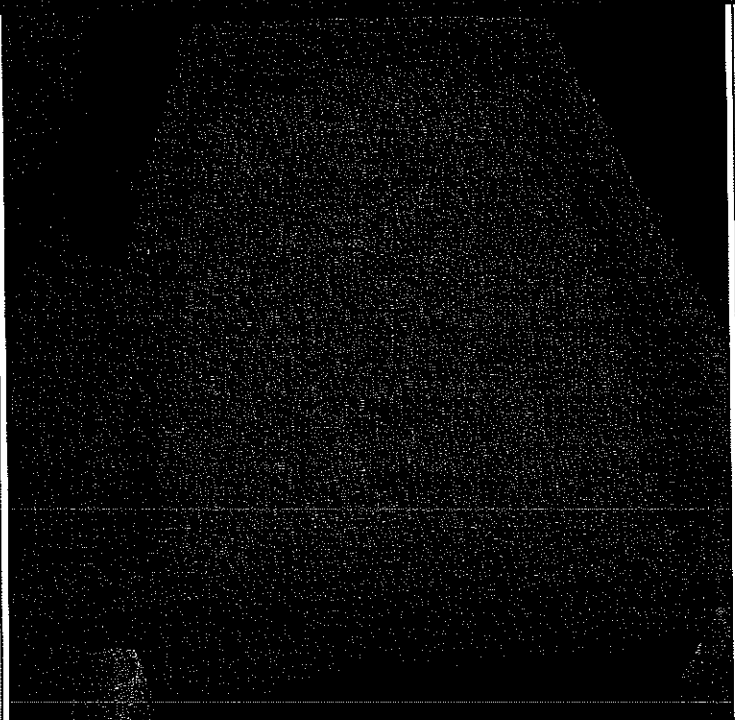
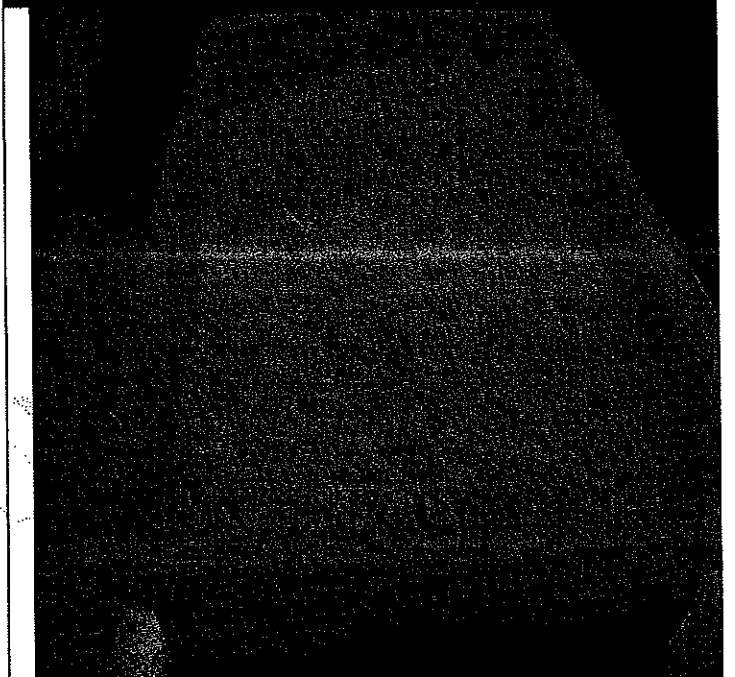
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Step 15	
	The pH of the sushi rice must be ≤ 4.1 before proceeding to the next step. The layer of rice in the container cannot be greater than 2 inches in depth.
	Why?
	pH was verified so rice can proceed to the next step.
Step 16	
	Once the rice is acidified, it is considered shelf-stable. Rice has a 24-hour shelf life and must be discarded after 24 hours.
	★ Do not use sushi rice with a pH of > 4.1 . If pH remains > 4.1 after adding 8 – 12 more oz. of sushi seasoning, discard. ★
	Why?
	24-hour shelf life of sushi rice is used to ensure product quality.

Effective Date: 1/03/2022

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15. Label the container with the rice pot number, product name, and use by date and time. Rice must be used up or discarded within 48 hours of the time the rice reached 41°F.
16. Brown sushi rice is controlled by temperature, so chefs or employees should only bring out enough necessary for preparation. Each roll takes about 2 minutes to prepare.

2. Recipes

a. Half-Pot of White Rice

- i. 3.5 lbs. Rice
- ii. 4 lbs. Water
- iii. 45 min. Cooking Time
- iv. 16 oz. (2 cups) Vinegar
- v. pH must be ≤ 4.1

b. Brown Rice

- i. 4 lbs. Brown Rice
- ii. 8 lbs. Water
- iii. 1 hour and 30 min. Cooking Time
- iv. 16 oz. (2 cups) Vinegar
- v. After mixing the rice with vinegar, the rice needs to cool down to below 70°F within the first two hours, then to below 41°F within four hours from preparation.

c. Multigrain Rice

- i. 1 lb. Multigrain Rice
- ii. 2 lbs. White Rice
- iii. 4.5 lbs. Water
- iv. 1 hour and 30 min. Cooking Time
- v. 12 oz. Vinegar
- vi. After mixing the rice with vinegar, the rice needs to cool down below 70°F within the first two hours, then to below 41°F within four hours from preparation.

III. Footnotes

	State	State-specific procedural difference
**	South Carolina, Ohio	Use three parts distilled water to one part acidified white rice when making rice slurry
**	Arizona	Use five parts distilled water to one part acidified white rice when making rice slurry

IV. Reference

- Standard Operating Procedure: Equipment Calibration (FSQ.018P.G.01)
- FDA and State specific Food Codes

Effective Date: 1/03/2022 Review By: 1 Year	Approved BY: Sr. Director of Food Safety & Compliance	Document ID: FSQ.019.P.R.02
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**Advanced
Food Labs Inc.**

2 Williams Street • Chelsea, MA 02150 • www.advancedfoodlabs.com

Tel: 617-269-6424 • Fax: 617-268-1635

Certificate of Analysis

January 17, 2022

Report ordered by:
HISSHO SUSHI
Kritika Shakya
11949 Steele Creek Road
Charlotte, North Carolina 28273

Report #37382

Page #1 of 1

Sample Submission Date: 01/13/2022

Sample Delivery: Client

Sample Location:
Stop & Shop #0006
829 Worcester Street
Natick, Massachusetts 01760

Sample ID: AFL92669
Sample Description: White Sushi Rice
Sample Production Date: 01/13/2022, 09:00 AM

ANALYSIS #	ANALYSIS DATE	ANALYSIS TIME	AMBIENT TEMPERATURE	pH RESULTS
1	1/13/2022	11:00 AM	20°C - 25°C	3.87
2	1/13/2022	12:00 PM	20°C - 25°C	3.84
3	1/13/2022	1:00 PM	20°C - 25°C	3.9
4	1/13/2022	2:00 PM	20°C - 25°C	3.85
5	1/13/2022	3:00 PM	20°C - 25°C	3.97
6	1/13/2022	4:00 PM	20°C - 25°C	3.95
7	1/13/2022	5:00 PM	20°C - 25°C	3.87
8	1/13/2022	6:00 PM	20°C - 25°C	3.96
9	1/13/2022	7:00 PM	20°C - 25°C	3.87
10	1/13/2022	8:00 PM	20°C - 25°C	3.91
11	1/13/2022	9:00 PM	20°C - 25°C	3.90
12	1/13/2022	10:00 PM	20°C - 25°C	3.96
13	1/13/2022	11:00 PM	20°C - 25°C	3.92
14	1/13/2022	12:00 AM	20°C - 25°C	3.88
15	1/14/2022	1:00 AM	20°C - 25°C	3.93
16	1/14/2022	2:00 AM	20°C - 25°C	3.94
17	1/14/2022	3:00 AM	20°C - 25°C	3.96
18	1/14/2022	4:00 AM	20°C - 25°C	3.90
19	1/14/2022	5:00 AM	20°C - 25°C	3.97
20	1/14/2022	6:00 AM	20°C - 25°C	3.96
21	1/14/2022	7:00 AM	20°C - 25°C	3.91
22	1/14/2022	8:00 AM	20°C - 25°C	3.99
23	1/14/2022	9:00 AM	20°C - 25°C	3.96
24	1/14/2022	10:00 AM	20°C - 25°C	3.98

METHOD: Association of Official Analytical Chemists International, 981.12.

Sulenna Aguilar
Sulenna Aguilar
Laboratory Analyst

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Certificate of Analysis

January 17, 2022

Report ordered by:

HISSHO SUSHI

Kritika Shakya

11949 Steele Creek Road

Charlotte, North Carolina 28273

Report #37348

Page #1 of 1

Sample Submission Date: 01/12/2022

Sample Delivery: Client

Sample Location:

STOP & SHOP #0455

695 Main Street

Winchester, Massachusetts 01890

Sample Description: White Sushi Rice

Sample Production Date: 01/12/2022

<u>SAMPLE #</u>	<u>SAMPLE ID</u>	<u>ANALYSIS</u>	<u>RESULT</u>	<u>METHOD</u>
1	AFL92600	pH	3.97	AOAC 981.12

Sylenna Aguilar

Laboratory Analyst

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Certificate of Analysis

January 17, 2022

Report ordered by:

HISSHO SUSHI

Kritika Shakya

11949 Steele Creek Road

Charlotte, North Carolina 28273

Report #37351

Page #1 of 1

Sample Submission Date: 01/12/2022

Sample Delivery: Client

Sample Location:

Babson College

231 Forest Street,

Babson Park., Massachusetts 02457

Sample Description: White Sushi Rice

Sample Production Date: 01/12/2022

<u>SAMPLE #</u>	<u>SAMPLE ID</u>	<u>ANALYSIS</u>	<u>RESULT</u>	<u>METHOD</u>
1	AFL92603	pH	3.87	AOAC 981.12

Sulenna Aguilar

Sulenna Aguilar
Laboratory Analyst

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Logs

I. Purpose & Definition

The purpose of this document is to outline Hissho*'s record-keeping and verification practices in our retail locations, as well as provide examples of the logs kept onsite and completed daily by the chefs, employees and chef helpers.

II. Program Overview¹

1. Logbook Maintenance

- a. Logs are used to monitor opening and closing procedures, pH of sushi rice, product temperature, receiving, and delivery (at select locations).
- b. Paper logs or digital logs are completed daily by the employees and will be maintained at the company's locations.
- c. Logs are to be verified at least monthly by a regional field team member as part of the HACCP monitoring plan.²
 - i. Verification is the monitoring that proper procedures are followed, and corrective actions are completed.
 - ii. Logs are reviewed by the Person in Charge at the end of each day.
 - iii. A company representative will verify logs during routine inspections.
- d. At least two (2) years' worth of logs must be available for review at the sushi bar.
- e. Logs must be stored chronologically, in a neat and orderly manner.

2. List of logs

- a. Traditional sushi bar "Daily Sanitation-Operation Log"
- b. Traditional sushi bar "Delivery Log (only for locations that deliver)"
- c. Traditional sushi bar "Receiving Log"
- d. Traditional sushi bar with Seafood HACCP requirements "Seafood HACCP Daily Sanitation/Operation Log (only for Seafood HACCP locations)"
- e. Traditional sushi bar with Seafood HACCP requirements "Seafood HACCP Delivery Log (only for Seafood HACCP locations)"
- f. Non-Traditional "Daily Sanitation/Operation Log"
- g. Non-Traditional "Delivery Log"

Effective Date: 1/03/2022
Review By: 1 Year

Approved BY: Sr. Director of Food
Safety & Compliance

Document ID: FSQ.021.P.G.02

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b. Delivery Log (only for locations that deliver)

Evlin Family Co. dba Hissho Sushi
11949 Steele Creek Rd.
Charlotte, NC 28273
www.hisshosushi.com



Delivery Log							
Delivery Location:							
Date	Loading Time	Loading Temp ≤41°F	Adequacy of Ice Acceptable?	Delivered Time	Delivered Temp ≤41°F	Delivered to Signature	Corrective Action
Example 01/10/19	9:03 am	38.6°F	<input checked="" type="checkbox"/>	9:38 am	40.2°F		
			<input type="checkbox"/>				
			<input type="checkbox"/>				
			<input type="checkbox"/>				
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			<input type="checkbox"/>				

- The internal temperature of finished product must be 41°F (5°C) or less prior to loading in the cooler and when delivered to location
- Record the time and temperature in "Loading" and "Delivery" columns
- Use "1-2" method when loading cooler : 1 ice blanket – 2 rows of packaging – 1 ice blanket
- Store coolers and ice blankets in walk in freezer for next day's deliveries
- Ice blankets must be made with water or a non-toxic, water-based gel

Verified By: _____

Date: _____

Form: FS-RDL-1

S:\Compliance\Logbook\2019\FS-RDL-1

Version: 2/2019

Effective Date: 1/03/2022 Review By: 1 Year	Approved BY: Sr. Director of Food Safety & Compliance	Document ID: FSQ.021.P.G.02
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d. Seafood HACCP Daily Sanitation / Operation Log (only for Seafood Haccp locations)

Daily Sanitation / Operation Log

Date: _____

✓ Check each item. Write corrective action on back page if a problem occurs.

Sanitation					
Equipment	BEGIN SHIFT	10AM	1PM	4PM	END SHIFT
Safety of Water – Drinkable; Water faucets working & fixtures w/ air gap or back flow device • Toilet facilities clean & working					
Conditions & cleanliness of food contact surfaces, utensils, gloves & outer garments: • Food & Equipment in good condition (no cracks, breaks, holes, rust) • Equipment/utensils are cleanable and in good condition • Gloves/uniform are clean & sanitary; no jewelry; hair restraint, non-slip shoes					
Employee Health (Workers are healthy; No infected lesions); • No Pests in Facility (area clean & items stored properly)					
Prevention of Cross Contamination • Employees practices don't result in cross contamination • Raw, cooked & finished foods separated by area • Sink & floor drains not clogged					
Hand washing, Sanitizing, Toilet • Hot water (≥100°F, soap, paper towels) @ hand sinks in sushi bar and restroom, hand washing practices					
Protection of Food, Food Packaging Material, Food Contact Surfaces • Protected from contamination (lighting covered, no drips, packaging stored upside down) • Ingredients covered when not in use, dated, labeled					
Toxic Compounds • pH Buffers & sanitizer labeled & stored away from food.					
Clean and sanitize: cutting boards, knives, tables, countertops, work surfaces; Check sanitizer concentration; • Rewrap bamboo mats					
Clean floor, shelves, drains & trash can, remove trash • Refrigerators and freezers clean & orderly					
Place All Ingredients in Walk In Cooler At Closing					
Initials					
pH Meter Calibration	7.00/ 4.00	Time:		Initials:	
Thermometer Calibration	Temperature:	Time:		Initials:	

Internal Temperature of Food	NIGHT MAX TEMP	BEGIN SHIFT	8 AM	10 AM	12 PM	2 PM	4 PM	6 PM	End Shift
Sushi Retail Display Case									
Cold Top/ Ingredients on Ice									
Prep / Reach-in Cooler									
Walk-in Cooler									
Freezer									
Initials:									

Effective Date: 1/03/2022

Review By: 1 Year

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e. Seafood HACCP Delivery Log (only for Seafood Haccp locations)

[illegible]

- The internal temperature of finished product must be 41°F (5°C) or less prior to loading in the cooler and when delivered to location
- Record the time and temperature in "Loading" and "Delivery" columns
- Use "1-2" method when loading cooler: 1 ice blanket – 2 rows of packaging – 1 ice blanket
- Store coolers and ice blankets in walk in freezer for next day's deliveries
- Ice blankets must be made with water or a non-toxic, water-based gel

Verified: _____ Date: _____

Effective Date: 1/03/2022 Review By: 1 Year	Approved BY: Sr. Director of Food Safety & Compliance	Document ID: FSQ.021.P.G.02
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Product Temperature Holding Log

Cold Holding: Ingredients/Finished Products are maintained at 41°F or less.

Hot Holding: Temperature should be maintained at 140°.

Internal temperatures are recorded at least every 4 hours. Complete corrective action column if temperature is not in proper ranges.

Take two random internal product temperature checks for every unit in the facility.

[illegible]

Cooked/Reheated Product Internal Temperature Log

Check internal temperature of first two items cooked on each unit.

[illegible]

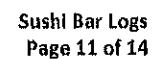
Minimum Internal Temperature Requirements For Cooking Raw Foods

165F (74C) for 15 seconds	Poultry (solid & ground, marinated), Previously cooked TCS (Temperature Controlled for Safety) ingredients,
160F for 15 seconds	Ground Meat (beef, pork, fish)
155F (68C) for 17 seconds	Beef (steak, chops, marinated), Pork (steaks, chops, marinated), Injected Meat
145F (63C) for 15 seconds	Seafood
140F (60C) for 15 seconds	Commercially processed, ready-to-eat food, heated for the first time, to be hot-held for service (and/or per manufacturer's recommendation). Plant food that will be hot held for service

Effective Date: 1/03/2022 Review By: 1 Year	Approved BY: Sr. Director of Food Safety & Compliance	Document ID: FSQ.021.P.G.02
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Corrective Actions:

Supervisor Signature: _____

Date: _____

Document ID: FSQ.021.P.G.02

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Product temperature must be below 41F before loaded onto van or into cooler. If delivery van is used, van temperature must be below 41.0F before product is loaded. Product delivery temperature must be below 41.0F.

Delivery Log												
Time product loaded in van/cooler	:	am/pm	Van temp at loading (<41.0°F)	:	Pre-Loading Product Internal Temperatures (<41.0°F)	:	°F	:	°F	:	°F	:
Delivery Location	Delivery Time	am/pm	Delivery Temp (<41.0°F)	Delivery Signature	Number of packages returned from previous day							
					Special	Krispy Kibb	Salmon Avocado	Celi.	Phila.	Spicy Tuna	Crunch Shrimp	Cheetos Roll
	:	am/pm	°F									
	:	am/pm	°F									
	:	am/pm	°F									
	:	am/pm	°F									
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	:	am/pm	°F									
	:	am/pm	°F									

If corrective action performed is not listed as a corrective action code, please describe the corrective action below.

Supervisor Signature: _____

Date: _____

IV. Footnote:

1	Wisconsin Delivery, Connecticut Delivery	<ul style="list-style-type: none"> InTemp monitoring temperatures are to be downloaded and reviewed each morning prior to operation. The overnight temperatures are recorded on the Overnight Temperature Monitoring Log.
2	Wisconsin Delivery, Connecticut Delivery	<ul style="list-style-type: none"> Logs are reviewed within 1 week and signed by the certified Seafood HACCP person in charge. The logs are completed daily by the chef, employees and will be maintained at the sushi bar, and held for weekly verification by the certified Seafood HACCP individual, as part of the HACCP monitoring plan.

V. Reference

FDA and State-specific Food Codes

VI. Responsibility

Document Owner:

Effective Date: 1/03/2022 Review By: 1 Year	Approved BY: Sr. Director of Food Safety & Compliance	Document ID: FSQ.021.P.G.02
*As used in this document, "Hissho" means Hissho, Oumi, Sushi with Gusto and any other branded restaurant to which a copy of this policy has been provided.		

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Town of Arlington
Department of Health and Human Services
Office of the Board of Health

27 Maple Street
Arlington, MA 02476

Tel: (781) 316-3170
Fax: (781) 316-3175

MEMORANDUM

To: Board of Health
From: Pdraig Martin, Lead Health Compliance Officer
Date: September 9, 2022
RE: Dagg's Deli – First Violation

On September 8, 2022, Rotem Aloni, Agent of the Board of Health conducted a compliance check at Dagg's Deli, located at 148 Massachusetts Avenue. During the inspection, Ms. Aloni observed blunt wrappers available for purchase.

The Arlington Regulations Restricting the Sale of Tobacco Products and Nicotine Delivery Products state in part G, prohibition of the sale of blunt wraps that "No person or entity shall sell or distribute blunt wraps in Arlington".

This violation represents the first violation for Dagg's Deli in a 36-month period. The Arlington Regulations Restricting the Sale of Tobacco Products and Nicotine Delivery Products state in part Q: Violations states in part "2. For violations of all other sections specific to the Town of Arlington, the violator shall receive: 13 a) In the case of a first violation, a fine of one hundred dollars (\$100.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for seven (7) consecutive business days"

Representatives of Dagg's Deli were informed of today's hearing for the Board of Health's decision regarding the above cited violation.



Town of Arlington
Department of Health and Human Services
Office of the Board of Health

27 Maple Street
Arlington, MA 02476

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Fax: (781) 316-3175

MEMORANDUM

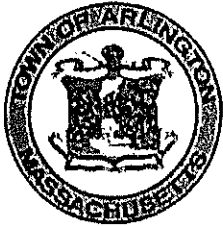
To: Board of Health
From: Pdraig Martin, Lead Health Compliance Officer
Date: September 9, 2022
RE: Galaxy Market Tobacco Permit

Galaxy market applied for and obtained their Retail Tobacco Sales Permit from the Arlington Board of Health in January 2002. Since 2012, Galaxy market has failed eight (8) compliance checks. Six (6) of these failed compliance checks occurred within the last 36 months.

- On December 1, 2020, Galaxy Market was cited for offering for sale a flavored nicotine delivery product.
\$1,000 Fine
- On June 9, 2021, Galaxy Market was cited for the sale of tobacco product to a person under the minimum legal sales age *\$2,000 fine and a 14-day suspension*
- On June 22, 2021, Galaxy Market was cited for offering for sale a flavored nicotine delivery product.
\$5,000 Fine and a 30-day suspension
- August 10, 2021, Galaxy Market was cited for the failure to remove all tobacco products and nicotine delivery products from the retail establishment upon suspension of the Tobacco and Nicotine Delivery Product Sales Permit *\$5,000 fine and 30-day suspension*
- On September 1, 2021, Galaxy Market was cited for the failure to remove all tobacco products and nicotine delivery products from the retail establishment upon suspension of the Tobacco and Nicotine Delivery Product Sales Permit *Suspension through December 31, 2021 and required hearing for a 2022 permit.*
- May 18 2022, Galaxy Market was cited for failure to comply with Section F (1) of the Board of Health Regulation Restricting the Sale of Tobacco Products and Nicotine Delivery Products. *\$300 fine and 30-day suspension*

In addition to the above violations, Galaxy Market was also cited for a failed compliance check from the MA Department of Revenue. As a result, they were placed under a 90-day suspension for sale of certain products beginning on December 15, 2021.

During the January 26, 2022 Board of Health meeting, the Board of Health voted 2-1 in favor of granting Galaxy Market a conditional 2022 Retail Tobacco Sales Permit through March 31, 2022 in order to support Galaxy Market's plan to sell their business. The Board of Health again voted at the March 16, 2022 meeting to grant Galaxy Market a conditional 2022 Retail Tobacco Sales Permit through June 30, 2022. No extension was granted after June 30, 2022 due to the establishment serving a suspension for their May 18, 2022 violation. They are before the Board today to determine if an extension to their conditional 2022 Retail Tobacco Sales Permit will be granted.



Town of Arlington
Department of Health and Human Services
Office of the Board of Health
27 Maple Street
Arlington, MA 02476

Tel: (781) 316-3170
Fax: (781) 316-3175

June 23, 2022

Hand Delivered
Galaxy Market
Attn: Shajid Shaikh
1348 Massachusetts Ave
Arlington, MA 02476

Re: *Galaxy Market- Arlington, MA*
Suspension of Tobacco and Nicotine Delivery Product Sales Permit

Dear Mr. Shaikh:

This letter serves to document the decision rendered by the Board of Health at the hearing held on June 22, 2022 in response to a violations of *the Regulation Restricting the Sale of Tobacco Products and Nicotine Delivery Products* ("Regulation") that occurred on May 18, 2022. At the hearing, the Board of Health voted unanimously to uphold a fine of three-hundred dollars (\$300.00) and to impose a suspension of your Tobacco and Nicotine Delivery Product Sales Permit ("Permit") in accordance with section Q 2(c) of the Regulation, which is to be served beginning **June 27, 2022** and continuing through the end of business on **July 26, 2022**. Please be advised, your conditional permit is set to expire on June 30, 2022. Should the business wish to request an extension to their conditional permit, please notify this office in writing and a hearing will be scheduled with the Board of Health.

Please note that the failure to remove all tobacco and nicotine delivery products from the premises shall constitute a separate violation of the Regulation, and the sale or distribution of tobacco or nicotine delivery products directly to a consumer while your Permit is suspended may result in the suspension of all permits issued by the Board of Health for thirty (30) consecutive business days. Please contact the undersigned with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Padraig Martin", is written over a horizontal line.

Padraig Martin
Lead Health Compliance Officer
(781) 316-3169
pmartin@town.arlington.ma.us

cc: Natasha Waden, Director of Public Health



Town of Arlington
Department of Health and Human Services
Office of the Board of Health
27 Maple Street
Arlington, MA 02476

Tel: (781) 316-3170
Fax: (781) 316-3175

Correction Order

May 26, 2022

HAND DELIVERED

Galaxy Market
Attn: Shajid Shaikh
1348 Massachusetts Avenue
Arlington, MA 02476

Please be advised that on May 18, 2022, at approximately 10:00 AM, Rotem Aloni, Agent of the Board of Health, conducted an inspection of your establishment. Ms. Aloni observed that a two pack of cigars priced at \$1.00 was available for purchase at the time of inspection.

Galaxy Market violated the Board of Health Regulation Restricting the Sale of Tobacco Products and Nicotine Delivery Products by:

- ☐ Sale of tobacco product to a person under the Minimum Legal Sales Age;
- ☐ Sale of a flavored nicotine delivery tobacco product [flavored combustible and other traditional tobacco products are prohibited on and after June 1, 2020];
- ☐ Offered for sale a flavored nicotine delivery product [see above];
- ☐ Failure of a non-age restricted establishment to maintain a record from the manufacturer indicating that an unflavored nicotine delivery product has a nicotine content of 35 milligrams per milliliter or less;
- ☒ Other, see the below additional violation(s), with any necessary additional pages attached:

Failure to comply with Section F (1) of the Board of Health Regulation Restricting the Sale of Tobacco Products and Nicotine Delivery Products which states "No retailer, retail establishment, or other individual or entity shall sell or distribute or cause to be sold or distributed a cigar unless the cigar is contained in an original package of at least four (4) cigars."

You are hereby ordered to comply with the Board of Health Regulation Restricting the Sale of Tobacco Products and Nicotine Delivery Products. In addition, the following fines and actions apply against

Galaxy Market for violations of the Board of Health Regulation Restricting the Sale of Tobacco Products and Nicotine Delivery Products:

☐ In the case of a first violation, a fine of one hundred dollars (\$100.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for seven (7) consecutive business days.

☐ In the case of a second violation within 36 months of the date of the current violation, a fine of two hundred dollars (\$200.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for fourteen (14) consecutive business days.

☐ In the case of three or more violations within a 36 month period, a fine of three hundred dollars (\$300.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for thirty (30) consecutive business days.

☒ Fifth violation within a 36-month period from the first violation or additional violations during that time period: a fine of three hundred dollars (\$300.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for thirty (30) consecutive business days.

You are hereby ordered to pay the amount of \$300.00 by check or money order made payable to the Town of Arlington within twenty-one (21) days of receipt of this order to the address below:

Arlington Board of Health
27 Maple Street
Arlington, MA 02476

You are hereby ordered to attend a Board of Health hearing on **Wednesday, June 22nd, 2022 at 5:00 PM**. This hearing will be held to determine any further enforcement proceedings, including the possible suspension of your permit. The meeting will be conducted online via remote participation. A link to register for the meeting will be forthcoming.

Failure to comply with this order may result in additional penalties as permitted by law.

Signed by:



Name:

5/26/2022
Date:

Padraig Martin, REHS
Lead Health Compliance Officer
Town of Arlington
27 Maple Street
Arlington, MA 02476

From: Farha Shaikh <farhashaikh101@gmail.com>
To: Padraig Martin <PMartin@town.arlington.ma.us>
Date: 05/27/2022 10:53 AM
Subject: Galaxy Market

CAUTION: This email originated from outside of the Town of Arlington's email system. Do not click links or open attachments unless you recognize the REAL sender (whose email address in the From: line in "< >" brackets) and you know the content is safe.

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hi Pat,

Hope you are doing well. We recently had an inspection at the store and we got a report for failure to comply. I wanted to clarify with you the item priced for \$1 is cigarettes rolling paper and we verified that we are able to sell it as it is.

The inspector only questioned about this item while at the store and I am including a photo of it. It seemed like the Inspector didn't know much about it but It's not cigars or cigarettes, but is rolling papers. You know very well what we have been through, so we are extremely cautious. Please call me back when you get into the office at 617-888-5830.

Thank you,
Farha

Sent from my iPhone

Attachments:

File: image0.jpeg	Size: 652k	Content Type: image/jpeg
File: image1.jpeg	Size: 337k	Content Type: image/jpeg



Town of Arlington
Department of Health and Human Services
Office of the Board of Health
27 Maple Street
Arlington, MA 02476

Tel: (781) 316-3170
Fax: (781) 316-3175

March 17, 2022

Hand Delivered

Galaxy Market
Attn: Shajid Shaikh
1348 Massachusetts Ave
Arlington, MA 02476

*Re: Galaxy Market- Arlington, MA
Hearing Outcome - Temporary Tobacco and Nicotine Delivery Product Sales Permit*

Dear Mr. Shaikh:

This letter serves to document the decision rendered by the Board of Health at the hearing held on March 16, 2022 in response to the violations of *the Regulation Restricting the Sale of Tobacco Products and Nicotine Delivery Products* ("Regulation"). At the hearing, the Board of Health voted unanimously to issue a Tobacco and Nicotine Delivery Product Sales Permit ("Permit") for Quarter 2 of 2022. This means your permit will be valid through the end of business on June 30, 2022. You must appear before the Board on June 22, 2022. At this time, the Board will vote on whether or not to extend your permit.

Failure to comply with the Regulation may result in the temporary or permanent revocation of your permit.

Please direct any questions to the undersigned.

Sincerely,

Padraig Martin
Lead Health Compliance Officer
pmartin@town.arlington.ma.us
(781) 316-3169

cc: Natasha Waden, Director of Public Health



Town of Arlington
Department of Health and Human Services
Office of the Board of Health
27 Maple Street
Arlington, MA 02476

Tel: (781) 316-3170
Fax: (781) 316-3175

January 27, 2022

Hand Delivered
Galaxy Market
Attn: Shajid Shaikh
1348 Massachusetts Ave
Arlington, MA 02476

Re: *Galaxy Market- Arlington, MA*
Hearing Outcome - Temporary Tobacco and Nicotine Delivery Product Sales Permit

Dear Mr. Shaikh:

This letter serves to document the decision rendered by the Board of Health at the hearing held on January 26, 2022 in response to the violations of *the Regulation Restricting the Sale of Tobacco Products and Nicotine Delivery Products* ("Regulation"). At the hearing, the Board of Health voted 2-1 to issue a Tobacco and Nicotine Delivery Product Sales Permit ("Permit") for Quarter 1 of 2022. This means your permit will be valid from January 27, 2022 through the end of business on March 31, 2022. You must appear before the Board on March 16, 2022. At this time, the Board will vote on whether or not to extend your permit.

Failure to comply with the Regulation may result in the temporary or permanent revocation of your permit.

Please direct any questions to the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Padraig Martin", is written over a horizontal line.

Padraig Martin
Lead Health Compliance Officer
pmartin@town.arlington.ma.us
(781) 316-3169

cc: Natasha Waden, Director of Public Health



Town of Arlington
Department of Health and Human Services
Office of the Board of Health
27 Maple Street
Arlington, MA 02476

Tel: (781) 316-3170
Fax: (781) 316-3175

September 16, 2021

Hand Delivered

Galaxy Market
Attn: Shajid Shaikh
1348 Massachusetts Ave
Arlington, MA 02476

Re: *Galaxy Market- Arlington, MA*
Suspension of Tobacco and Nicotine Delivery Product Sales Permit

Dear Mr. Shaikh:

This letter serves to document the decision rendered by the Board of Health at the hearing held on September 15, 2021 in response to a violations of *the Regulation Restricting the Sale of Tobacco Products and Nicotine Delivery Products* ("Regulation") that occurred on August 10, 2021 and September 1, 2021. At the hearing, the Board of Health voted unanimously to uphold a fine of five-thousand dollars (\$5,000.00) and to impose a suspension of your Tobacco and Nicotine Delivery Product Sales Permit ("Permit") in accordance with section P 1(a) of the Regulation, which is to be served beginning **September 16, 2021** and continuing through the end of business on **December 31, 2021**. Shall the business be sold in that timeframe, the new owner will have first opportunity to apply for the Tobacco and Nicotine Delivery Product Sales Permit associated with Galaxy Market.

A future violation of the Regulation within thirty-six (36) months of the first violation (dated December 1, 2020) would be considered your fifth violation and may result in a fine of five-thousand dollars (\$5,000.00) and a suspension of your Permit for thirty (30) consecutive business days or the revocation of your Permit to sell tobacco and nicotine delivery products. Please note that the failure to remove all tobacco and nicotine delivery products from the premises shall constitute a separate violation of the Regulation, and the sale or distribution of tobacco or nicotine delivery products directly to a consumer while your Permit is suspended may result in the suspension of all permits issued by the Board of Health for thirty (30) consecutive business days. Please contact the undersigned with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Padraig Martin", is written over a horizontal line.

Padraig Martin
Lead Health Compliance Officer
(781) 316-3169
pmartin@town.arlington.ma.us

cc: Natasha Waden, Director of Public Health



Town of Arlington
Department of Health and Human Services
Office of the Board of Health
27 Maple Street
Arlington, MA 02476

Tel: (781) 316-3170
Fax: (781) 316-3175

July 26, 2021

Hand Delivered

Galaxy Market
Attn: Shajid Shaikh
1348 Massachusetts Ave
Arlington, MA 02476

*Re: Galaxy Market- Arlington, MA
Suspension of Tobacco and Nicotine Delivery Product Sales Permit*

Dear Mr. Shaikh:

This letter serves to document the decision rendered by the Board of Health at the hearing held on July 21, 2021 in response to a violation of *the Regulation Restricting the Sale of Tobacco Products and Nicotine Delivery Products* ("Regulation") that occurred on June 22, 2021. At the hearing, the Board of Health voted unanimously to uphold a fine of five-thousand dollars (\$5,000.00) and to impose a 30-day suspension of your Tobacco and Nicotine Delivery Product Sales Permit ("Permit") in accordance with section P 1(a) of the Regulation, which is to be served beginning **August 17, 2021** and continuing through the end of business on **September 15, 2021**.

A future violation of the Regulation within thirty-six (36) months of the first violation (dated December 1, 2020) would be considered your fourth violation and may result in a fine of five-thousand dollars (\$5,000.00) and a suspension of your Permit for thirty (30) consecutive business days or the revocation of your Permit to sell tobacco and nicotine delivery products. Please note that the failure to remove all tobacco and nicotine delivery products shall constitute a separate violation of the Regulation, and the sale or distribution of tobacco or nicotine delivery products directly to a consumer while your Permit is suspended may result in the suspension of all permits issued by the Board of Health for thirty (30) consecutive business days. Please contact the undersigned with any questions.

Sincerely,

Padraig Martin
Lead Health Compliance Officer
(781) 316-3169
pmartin@town.arlington.ma.us

cc: Natasha Waden, Director of Public Health



Town of Arlington
Department of Health and Human Services
Office of the Board of Health
27 Maple Street
Arlington, MA 02476

Tel: (781) 316-3170
Fax: (781) 316-3175

July 26, 2021

Hand Delivered

Galaxy Market
Attn: Shajid Shaikh
1348 Massachusetts Ave
Arlington, MA 02476

*Re: Galaxy Market- Arlington, MA
Suspension of Tobacco and Nicotine Delivery Product Sales Permit*

Dear Mr. Shaikh:

This letter serves to document the decision rendered by the Board of Health at the hearing held on July 21, 2021 in response to a violation of *the Regulation Restricting the Sale of Tobacco Products and Nicotine Delivery Products* ("Regulation") that occurred on June 9, 2021. At the hearing, the Board of Health voted unanimously to uphold a fine of two-thousand dollars (\$2,000.00) and to impose a 14-day suspension of your Tobacco and Nicotine Delivery Product Sales Permit ("Permit") in accordance with section P 1(a) of the Regulation, which is to be served beginning **August 3, 2021** and continuing through the end of business on **August 16, 2021**.

A future violation of the Regulation within thirty-six (36) months of the first violation (dated December 1, 2020) would be considered your third violation and may result in a fine of five-thousand dollars (\$5,000.00) and a suspension of your Permit for thirty (30) consecutive business days or the revocation of your Permit to sell tobacco and nicotine delivery products. Please note that the failure to remove all tobacco and nicotine delivery products shall constitute a separate violation of the Regulation, and the sale or distribution of tobacco or nicotine delivery products directly to a consumer while your Permit is suspended may result in the suspension of all permits issued by the Board of Health for thirty (30) consecutive business days. Please contact the undersigned with any questions.

Sincerely,

Padraig Martin
Lead Health Compliance Officer
(781) 316-3169
pmartin@town.arlington.ma.us

cc: Natasha Waden, Director of Public Health



Town of Arlington
Department of Health and Human Services
Office of the Board of Health
27 Maple Street
Arlington, MA 02476

Tel: (781) 316-3170
Fax: (781) 316-3175

Correction Order

December 4, 2020

HAND DELIVERED

Galaxy Market
Attn: Shajid Shaikh
1348 Massachusetts Avenue
Arlington, MA 02476

Please be advised that on December 1, 2020, at approximately 11:15 AM, the Arlington Board of Health conducted an inspection of your establishment after receiving a complaint regarding the sale of menthol tobacco products. Multiple flavored tobacco products were observed behind the counter at the time of inspection. These products included menthol cigarettes, menthol cigarette filter tubes, vanilla flavored cigarillos, and menthol flavored cigarillos.

Galaxy Market violated the state law entitled "An Act to Modernize Tobacco Control" and 105 CMR 665.000 by:

- ☐ Sale of tobacco product to a person under the Minimum Legal Sales Age;
- ☐ Sale of a flavored nicotine delivery tobacco product [flavored combustible and other traditional tobacco products are prohibited on and after June 1, 2020];
- ☒ **Offered for sale a flavored nicotine delivery product [see above];**
- ☐ Failure of a non-age restricted establishment to maintain a record from the manufacturer indicating that an unflavored nicotine delivery product has a nicotine content of 35 milligrams per milliliter or less;
- ☐ Other, see the below additional violations, with any necessary additional pages attached:

You are hereby ordered to comply with An Act to Modernize Tobacco Control and 105 CMR 665.000. In addition, the following fines and actions apply against Galaxy Market for violations of 105 CMR 665.000:

- ☒ **First violation: a fine of One Thousand (\$1,000.00) Dollars;**
- ☐ Second violation within a 36-month period from the first violation: a fine of Two Thousand (\$2,000.00) Dollars and a minimum of a 1 day suspension up to a 7 day suspension;

☐ Third violation within a 36-month period from the first violation or additional violations during that time period: a fine of Five Thousand (\$5,000.00) Dollars and a minimum of a 7 day suspension up to a 30 day suspension.

Consistent with 105 CMR 665.000, if this is a second, third or more violation within a 36-month period as indicated above, a **notice of the intent to suspend** the sale of tobacco products at or by **Galaxy Market** will follow forthwith.

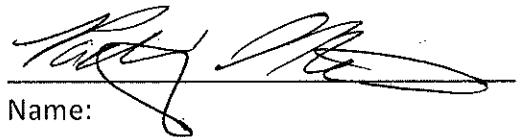
You are hereby ordered to pay the amount of **\$1,000.00** by check or money order made payable to the Town of Arlington within twenty-one (21) days of receipt of this order to the address below:

Arlington Board of Health
27 Maple Street
Arlington, MA 02476

If you are aggrieved by this order, you have the right to request a Hearing before the Board of Health. This request must be made by you, in writing, and filed within seven (7) days after the date this Order was served or actually received. Any affected party has a right to appear at said hearing.

Failure to comply with this order may result in additional penalties as permitted by law.

Signed by:


Name:

12/4/2020
Date:

Padraig Martin, REHS
Lead Health Compliance Officer
Town of Arlington
27 Maple Street
Arlington, MA 02476



Town of Arlington
Department of Health and Human Services
Office of the Board of Health
27 Maple Street
Arlington, MA 02476

Tel: (781) 316-3170
Fax: (781) 316-3175

**REGULATION RESTRICTING THE SALE OF TOBACCO PRODUCTS AND NICOTINE
DELIVERY PRODUCTS**

A. STATEMENT OF PURPOSE:

Whereas there exists conclusive evidence that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat¹;

Whereas among the 15.7% of students nationwide who currently smoke cigarettes and were less than 18 years old, 14.1% usually obtained them by buying them in a store (i.e. convenience store, supermarket, or discount store) or gas station²;

Whereas nationally in 2009, 72% of high school smokers and 66% of middle school smokers were not asked to show proof of age when purchasing cigarettes³;

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin⁴;

Whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major public health problem;

Whereas many non-cigarette tobacco products, such as cigars and cigarillos, can be sold in a single "dose;" enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth⁵;

¹ Center for Disease Control and Prevention, (CDC) (2012), *Health Effects of Cigarette Smoking Fact Sheet*. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm.

² CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (Morbidity and Mortality Weekly Report (MMWR) 2010: 59, 11 (No. SS-55)) Retrieved from: <http://www.cdc.gov/HealthyYouth/yrbs/index.htm>.

³ CDC Office of Smoking and Health, *National Youth Tobacco Survey, 2009*. Analysis by the American Lung Association (ALA), Research and Program Services Division using SPSS software, as reported in "Trends in Tobacco Use", ALA Research and Program Services, Epidemiology and Statistics Unit, July 2011. Retrieved from: www.lung.org/finding-cures/our-research/trend-reports/Tobacco-Trend-Report.pdf.

⁴ CDC (2010), *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/sgr/2010/.

Whereas according to the CDC's youth risk behavior surveillance system, the percentage of high school students in Massachusetts who reported the use of cigars within the past 30 days went from 11.8% in 2003 to 14.9% in 2009⁶;

Whereas the U.S. Food and Drug Administration and the Tobacco Products Scientific Advisory Committee concluded that menthol flavored tobacco products increased nicotine dependence, decreased success in smoking cessation⁷

Whereas menthol makes it easier for youth to initiate tobacco use⁸;

Whereas use of e-cigarettes among students in Massachusetts is 20.1%, representing a 78% increase for high schoolers and a 48% increase for middle schoolers from 2017 to 2018⁹;

Whereas survey results show that more youth report that they have smoked a cigar product when it is mentioned by name, than report that they smoked a cigar in general, indicating that cigar use among youth is underreported¹⁰;

Whereas in Massachusetts, youth use of all other tobacco products, including cigars, rose from 13.3% in 2003 to 17.6% in 2009, and was higher than the rate of current cigarette use (16%) for the first time in history¹¹;

Whereas research shows that increased cigar prices significantly decreased the probability of male adolescent cigar use and a 10% increase in cigar prices would reduce use by 3.4%¹²;

Whereas nicotine levels in cigars are generally much higher than nicotine levels in cigarettes¹³;

⁵ CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 12, note 5). Retrieved from: <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>.

⁶ CDC (2009) *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 72 (No SS-55)). Retrieved from: www.cdc.gov; and CDC (2003), *Youth Risk Behavior, Surveillance Summaries* (MMWR 2004: 53, 54 (No. SS-02)).

⁷ www.fda.gov/downloads/ucm361598.pdf, <https://tobacco.ucsf.edu/tpsac-gave-fda-what-it-needs-to-ban-menthol>

⁸ www.tobaccofreekids.org/assets/factsheet/0390.pdf

⁹ MA YRBS 2017

¹⁰ 2010 Boston Youth Risk Behavior Study. 16.5% of Boston youth responded that they had ever smoked a fruit or candy flavored cigar, cigarillo or little cigar, while 24.1% reported ever smoking a "Black and Mild" Cigar.

¹¹ Commonwealth of Massachusetts, Data Brief, Trends in Youth Tobacco Use in Massachusetts, 1993-2009. Retrieved from: http://www.mass.gov/Eeohhs2/docs/dph/tobacco_control/adolescent_tobacco_use_youth_trends_1993_2009.pdf.

¹² Ringel, J., Wasserman, J., & Andreyeva, T. (2005) *Effects of Public Policy on Adolescents' Cigar Use: Evidence from the National Youth Tobacco Survey*. American Journal of Public Health, 95(6), 995-998, doi: 10.2105/AJPH.2003.030411 and cited in *Cigar, Cigarillo and Little Cigar Use among Canadian Youth: Are We Underestimating the Magnitude of this Problem?*, J. Prim. P. 2011, Aug: 32(3-4):161-70. Retrieved from: www.ncbi.nlm.nih.gov/pubmed/21809109.

Whereas Non-Residential Roll-Your-Own (RYO) machines located in retail stores enable retailers to sell cigarettes without paying the excise taxes that are imposed on conventionally manufactured cigarettes. High excise taxes encourage adult smokers to quit¹⁴ and high prices deter youth from starting.¹⁵ Inexpensive cigarettes, like those produced from RYO machines, promote the use of tobacco, resulting in a negative impact on public health and increased health care costs, and severely undercut the evidence-based public health benefit of imposing high excise taxes on tobacco;

Whereas it is estimated that 90% of what is being sold as pipe tobacco is actually being used in Non-Residential RYO machines. Pipe tobacco shipments went from 11.5 million pounds in 2009 to 22.4 million pounds in 2010. Traditional RYO tobacco shipments dropped from 11.2 million pounds to 5.8 million pounds; and cigarette shipments dropped from 308.6 billion sticks to 292.7 billion sticks according to the December 2010 statistical report released by the U.S. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB)¹⁶;

Whereas the sale of tobacco products and nicotine delivery products are incompatible with the mission of health care institutions because these products are detrimental to the public health and their presence in health care institutions undermine efforts to educate patients on the safe and effective use of medication, including cessation medication;

Whereas educational institutions sell tobacco products to a younger population, who is particularly at risk for becoming smokers and such sale of tobacco products and nicotine delivery products are incompatible with the mission of educational institutions that educate a younger population about social, environmental and health risks and harms;

Whereas sales of flavored little cigars increased by 23% between 2008 and 2010¹⁷; and the top three most popular cigar brands among African-American youth aged 12-17 are the flavored and low-cost Black & Mild, White Owl, and Swisher Sweets;¹⁸

Whereas the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009,

¹³ National Institute of Health (NIH), National Cancer Institute (NCI) (2010). *Cigar Smoking and Cancer*. Retrieved from: <http://www.cancer.gov/bcancertopics/factsheet/Tobacco/cigars>.

¹⁴ Eriksen, M., Mackay, J., Ross, H. (2012). *The Tobacco Atlas*, Fourth Edition, American Cancer Society, Chapter 29, p. 80. Retrieved from: www.TobaccoAtlas.org.

¹⁵ Chaloupka, F. J. & Lippman, P. D., NIH, NCI (2001). *The Impact of Price on Youth Tobacco Use, Smoking and Tobacco Control Monograph 14: Changing Adolescent Smoking Prevalence*) 193 – 200. Retrieved from: <http://dcccps.nih.gov/TCRB/monographs/>.

¹⁶ TTB (2011). *Statistical Report – Tobacco* (2011) (TTB S 5210-12-2010). Retrieved from: <http://www.ttb.gov/statistics/2010/201012tobacco.pdf>.

¹⁷ Delnevo, C., Flavored Little Cigars memo, September 21, 2011, from Neilson market scanner data.

¹⁸ SAMSHA, Analysis of data from the 2011 National Survey on Drug Use and Health

prohibited candy- and fruit-flavored cigarettes,¹⁹ largely because these flavored products were marketed to youth and young adults,²⁰ and younger smokers were more likely to have tried these products than older smokers;²¹

Whereas although the manufacture and distribution of flavored cigarettes (excluding menthol) is banned by federal law,²² neither federal nor Massachusetts laws restrict sales of flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, and electronic smoking devices and the nicotine solutions used in these devices;

Whereas the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be “starter” products that help establish smoking habits that can lead to long-term addiction;²³

Whereas data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle and high school smokers report using flavored little cigars or flavored cigarettes;²⁴

Now, therefore it is the intention of the Arlington Board of Health to regulate the sale of tobacco products and nicotine delivery products.

B. AUTHORITY:

This regulation is promulgated pursuant to the authority granted to the Arlington Board of Health by Massachusetts General Laws Chapter 111, Section 31 that "Boards of Health may make reasonable health regulations".

¹⁹ 21 U.S.C. § 387g.

²⁰ Carpenter CM, Wayne GF, Pauly JL, et al. 2005. “New Cigarette Brands with Flavors that Appeal to Youth: Tobacco Marketing Strategies.” *Health Affairs*. 24(6): 1601–1610; Lewis M and Wackowski O. 2006. “Dealing with an Innovative Industry: A Look at Flavored Cigarettes Promoted by Mainstream Brands.” *American Journal of Public Health*. 96(2): 244–251; Connolly GN. 2004. “Sweet and Spicy Flavours: New Brands for Minorities and Youth.” *Tobacco Control*. 13(3): 211–212; U.S. Department of Health and Human Services. 2012. Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 537, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

²¹ U.S. Department of Health and Human Services. 2012. Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

²² 21 U.S.C. § 387g

²³ Food and Drug Administration. 2011. Fact Sheet: Flavored Tobacco Products, www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf; U.S. Department of Health and Human Services. 2012. Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

²⁴ King BA, Tynan MA, Dube SR, et al. 2013. “Flavored-Little-Cigar and Flavored-Cigarette Use Among U.S. Middle and High School Students.” *Journal of Adolescent Health*. [Article in press], www.jahonline.org/article/S1054-139X%2813%2900415-1/abstract.

C. DEFINITIONS:

For the purpose of this regulation, the following words shall have the following meanings:

Adult-Only Retail Tobacco Store (also known as “Retail Tobacco Store” in MGL Ch. 270): An establishment that does not share space with another business, that has a separate entrance, that does not sell food or alcohol, that does not have a restaurant license or lottery license, whose only purpose is to sell or offer for retail sale tobacco products and/or tobacco product paraphernalia, in which the entry of persons under the age of 21 is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products from the Arlington Board of Health and applicable state licenses. Entrance to the establishment must be secure so that access to the establishment is restricted to employees and to those 21 years or older. The establishment shall not allow anyone under the age of 21 to work at the establishment.

Blunt Wrap: Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.

Business Agent: An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

Characterizing flavor: A distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted or detectable either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product or the provision of ingredient information.

Child-Resistant Package: Packaging intended to reduce the risk of a child ingesting nicotine and that meets the minimum standards of 16 C.F.R. 1700 *et seq.*, pursuant to 15 U.S.C. 1471 through 1476.

Component part: Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

Constituent: Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacturing or packaging of the tobacco product. Such term shall include a smoke constituent.

Distinguishable: Perceivable by either the sense of smell or taste.

E-Cigarette: Any electronic nicotine delivery product composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of solid nicotine or any liquid. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

Educational Institution: Any public or private college, school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

Electronic Nicotine Delivery System: An electronic device, whether for one-time use or reusable, that can be used to deliver nicotine or another substance to a person inhaling from the device including, but not limited to, electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, vaping pens, hookah pens and other similar devices that rely on vaporization or aerosolization; provided, however, that "electronic nicotine delivery system" shall also include any noncombustible liquid or gel that is manufactured into a finished product for use in such electronic device; provided further, that "electronic nicotine delivery system" shall also include any component, part or accessory of a device used during the operation of the device even if the part or accessory was sold separately; provided further, that "electronic nicotine delivery system" shall not include a product that has been approved by the United States Food and Drug Administration for the sale of or use as a tobacco cessation product or for other medical purposes and is marketed and sold or prescribed exclusively for that approved purpose

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals that uses the services of one (1) or more employees.

Flavored tobacco product: Any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

Health Care Institution: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112 or a retail establishment that provides pharmaceutical goods and services and is subject to the provisions of 247 CMR 6.00. Health care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices and dentist offices.

Liquid Nicotine Container: A package from which nicotine or other substance in a solution or other form is accessible through normal and foreseeable use by a consumer and that is used to hold a soluble nicotine or other substance in any concentration; provided however, that "liquid nicotine container" shall not include a sealed, prefilled and disposable container of nicotine or other substance in a solution or other form in which the container is inserted directly into an electronic cigarette, electronic nicotine

delivery system or other similar product if the nicotine or other substance in the container is inaccessible through customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion or other contact by children.

Minor: Any individual who is under the age of eighteen (18).

Nicotine Delivery Product: Any manufactured article or product made wholly or in part of a tobacco substitute or containing nicotine that is expected or intended for human consumption, but not including a product approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose. Nicotine delivery products include, but are not limited to, e-cigarettes.

Non-Residential Roll-Your-Own (RYO) Machine: A mechanical device made available for use (including to an individual who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the individual's own personal consumption or use) that is capable of making cigarettes, cigars or other tobacco products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

Permit Holder: Any person engaged in the sale or distribution of tobacco or nicotine delivery products directly to consumers who applies for and receives a tobacco and nicotine delivery product sales permit or any person who is required to apply for a Tobacco and Nicotine Delivery Product Sales Permit pursuant to these regulations, or his or her business agent.

Self-Service Display: Any display from which customers may select a tobacco product or a nicotine delivery product without assistance from an employee or store personnel.

Tobacco Product: A product containing or made or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, electronic cigarettes, electronic cigars, electronic pipes, electronic nicotine delivery systems or any other similar products that rely on vaporization or aerosolization regardless of nicotine content in the product; provided, however, that "tobacco product" shall also include any component, part or accessory of a tobacco product; and provided further, that "tobacco product" shall not include a product that has been approved by the United States Food and Drug Administration for the sale of or use as a tobacco cessation product or for other medical purposes and is marketed and sold or prescribed exclusively for the approved purpose.

Tobacco Product Flavor Enhancer: Any product designed, manufactured, produced, marketed or sold to produce a characterizing flavor when added to any tobacco product.

Vending Machine: Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes cigarettes, any other tobacco product or nicotine delivery product.

D. TOBACCO AND NICOTINE DELIVERY PRODUCT SALES PROHIBITED:

No person shall sell tobacco products or nicotine delivery products or permit tobacco products or nicotine delivery products to be sold to any person under the age of twenty-one (21) or not being the recipient's parent or legal guardian, give tobacco products or nicotine delivery products to any person under the age of twenty-one.

2. Required Signage

- a. All retail establishments, including adult-only retail tobacco stores, shall conspicuously post signage inside the establishment, in the form developed and made available by the Massachusetts Department of Public Health. Such signage shall include: (i) a copy of M.G.L. c. 270, §§ 7 6 and 6A; (ii) referral information for smoking cessation resources; (iii) a statement that sale of tobacco products, including e-cigarettes, to someone younger than 21 years of age is prohibited; (iv) health warnings associated with using electronic nicotine delivery systems; and (v) notice to consumers that the sale of flavored electronic nicotine systems are prohibited at all times. Such signage shall be posted conspicuously in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four feet or greater than nine feet from the floor.
- b. In addition to the notice required Section D 2. (a), a notice provided by the Arlington Board of Health shall also be posted by the owner or other person in charge thereof in the shop or other place used to sell tobacco and nicotine delivery products at retail. Such notice shall state that the sale of tobacco products to person's under the age as outlined in Section D.1. is illegal.
- c. All adult-only retail tobacco stores shall post signage, in the form developed and made available by the Massachusetts Department of Public Health, on the exterior of the door providing entrance to the tobacco retail store and such sign shall not be obstructed from view or placed at a height of less than four feet or greater than nine from the bottom of the door. Such signage shall state that "No person younger than 21 years old is permitted on the premises at any time."

3. Identification: Each person selling or distributing tobacco or nicotine delivery products, or admitting entrance into a adult-only retail tobacco store, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is at the age stated in Section (D) (1) or older. Verification is required for any person that appears under the age of 27.

4. All retail sales of tobacco or nicotine delivery products must be face-to-face between the seller and the buyer and occur at the permitted location.

E. TOBACCO AND NICOTINE DELIVERY PRODUCT SALES PERMIT:

1. No person shall sell or otherwise distribute tobacco or nicotine delivery products at retail establishments within the Town of Arlington without first obtaining a Tobacco and Nicotine Delivery

Product Sales Permit issued annually by the Arlington Board of Health. Only owners of establishments with a permanent, non-mobile location in Arlington are eligible to apply for a permit and sell tobacco products or nicotine delivery products at the specified location in Arlington.

2. As part of the Tobacco and Nicotine Delivery Product Sales Permit application process, the applicant will be provided with the Arlington Board of Health regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco and nicotine delivery product sales regarding federal, state and local laws regarding the sale of tobacco and this regulation.

3. Each applicant who sells tobacco is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a Tobacco and Nicotine Delivery Product Sales Permit can be issued.

4. The fee for a Tobacco and Nicotine Delivery Product Sales Permit shall be \$500.00, renewable on January 1.

5. A separate permit is required for each retail establishment selling tobacco and/or nicotine delivery products.

6. Each Tobacco and Nicotine Delivery Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.

7. No Tobacco and Nicotine Delivery Product Sales Permit holder shall allow any employee to sell tobacco products or nicotine delivery products until such employee reads this regulation and federal and state laws regarding the sale of tobacco and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state and federal laws.

8. A Tobacco and Nicotine Delivery Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco or nicotine delivery products must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.

9. Issuance of a Tobacco and Nicotine Delivery Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.

10. Issuance and holding of a Tobacco and Nicotine Delivery Product Sales Permit shall be conditioned on an applicant's on-going compliance with current Massachusetts Department of Revenue requirements and policies including, but not limited to, minimum retail prices of tobacco products.

11. A Tobacco and Nicotine Delivery Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or has not satisfied any outstanding permit suspensions.

12. Mandatory Retailer Training: As part of the Tobacco and Nicotine Delivery Product Sales Permit renewal process, permit holders are required to send at least one (1) employee who works on the premises to a tobacco retailer training conducted by the Arlington Board of Health once per year. The Arlington Board of Health will schedule the trainings and notify permit holders of the date (s). Failure of the establishment to send a retailer may result in suspension or revocation of a permit to sell tobacco and nicotine delivery products in the Town of Arlington.

13. Maximum Number of Tobacco and Nicotine Delivery Product Sales Permits: The maximum number of permits allowed shall be nineteen (19), reduced by the number of permits not renewed pursuant to Section E (14). New applicants for permits who are applying at a time when the total number of outstanding permits meets or exceeds the maximum number of permits allowed will be placed on a waiting list and will be eligible to apply for a permit on a “first-come, first-serve” basis as permits are either not renewed or returned to the Arlington Board of Health.

14. Any permit holder who has failed to renew an existing permit within 30 days of expiration will be treated as a first-time permit applicant.

15. A purchaser of a business that holds a current Tobacco and Nicotine Delivery Product Sales Permit at the time of the sale of said business may apply, within sixty (60) days of such sale, for the permit held by the Seller if the Buyer intends to sell tobacco products and/or nicotine delivery products. An owner of a business that holds a current Tobacco and Nicotine Delivery Product Sales Permit that intends to change the physical location of the business in Arlington must notify the Board of Health in writing thirty (30) days before such change of location occurs. The permit will be reissued reflecting the continuation of said business at the new address. Any permit holder who has failed to notify the Board of Health in writing thirty (30) days before changing the physical location of the business will be treated as a first-time applicant.

F. CIGAR SALES REGULATED:

1. No retailer, retail establishment, or other individual or entity shall sell or distribute or cause to be sold or distributed a cigar unless the cigar is contained in an original package of at least four (4) cigars.

2. This Section shall not apply to:

- a. The sale or distribution of any cigar having a retail price of two dollars and fifty cents (\$2.50) or more.

3. The Arlington Board of Health may adjust from time to time the amounts specified in this Section to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

G. PROHIBITION OF THE SALE OF BLUNT WRAPS:

No person or entity shall sell or distribute blunt wraps in Arlington.

H. PROHIBITION OF THE SALE OF FLAVORED TOBACCO AND NICOTINE DELIVERY PRODUCTS:

No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, as defined herein, or any flavored tobacco product enhancer, as defined herein. Per 105 CMR 665.010(E), manufacturers shall provide documentation certifying those products, sold by the retailer, that do not meet the definition of a flavored tobacco product or tobacco product flavor enhancer.

I. NICOTINE CONTENT IN ELECTRONIC NICOTINE DELIVERY SYSTEMS:

No person shall sell an electronic nicotine delivery system with nicotine content greater than 35 milligrams per milliliter; provided, however, that this subsection shall not apply to adult-only retail tobacco stores. Per 105 CMR 665.010(C), manufacturers shall provide documentation indicating the nicotine content of each of their products sold by the retailer, expressed as milligrams per milliliter.

J. FREE DISTRIBUTION AND COUPON REDEMPTION:

No person shall distribute, or cause to be distributed, any free samples of tobacco products or nicotine delivery products. No means, instruments or devices that allow for the redemption of all tobacco products or nicotine delivery products for free or cigarettes at a price below the minimum retail price determined by the Massachusetts Department of Revenue shall be accepted by any permit holder.

K. OUT-OF-PACKAGE SALES:

No person may sell or cause to be sold or distribute or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

L. SELF-SERVICE DISPLAYS:

All self-service displays of tobacco products and/or nicotine delivery products are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

M. VENDING MACHINES:

All tobacco and/or nicotine delivery product vending machines are prohibited.

N. NON-RESIDENTIAL ROLL-YOUR-OWN MACHINES:

All Non-Residential Roll-Your-Own machines are prohibited.

**O. PROHIBITION OF THE SALE OF TOBACCO AND NICOTINE DELIVERY PRODUCTS
BY HEALTH CARE INSTITUTIONS:**

No health care institution located in Arlington shall sell or cause to be sold tobacco or nicotine delivery products. No retail establishment that operates or has a health care institution within it, such as a pharmacy or drug store, shall sell or cause to be sold tobacco products or nicotine delivery products.

**P. PROHIBITION OF THE SALE OF TOBACCO AND NICOTINE DELIVERY PRODUCTS
BY EDUCATIONAL INSTITUTIONS:**

No educational institution located in Arlington shall sell or cause to be sold tobacco or nicotine delivery products. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

Q. VIOLATIONS:

1. It shall be the responsibility of the establishment, permit holder and/or his or her business agent to ensure compliance with all sections of this regulation pertaining to his or her distribution of tobacco and/or nicotine delivery products. The violator shall receive:
 - a) In the case of a first violation, a fine of one thousand dollars (\$1000.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for seven (7) consecutive business days.
 - b) In the case of a second violation within 36 months of the date of the current violation, a fine of two thousand dollars (\$2000.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for fourteen (14) consecutive business days.
 - c) In the case of three or more violations within a 36 month period, a fine of five thousand dollars (\$5000.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for thirty (30) consecutive business days
2. For violations of all other sections specific to the Town of Arlington, the violator shall receive:

- a) In the case of a first violation, a fine of one hundred dollars (\$100.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for seven (7) consecutive business days.
- b) In the case of a second violation within 36 months of the date of the current violation, a fine of two hundred dollars (\$200.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for fourteen (14) consecutive business days.
- c) In the case of three or more violations within a 36 month period, a fine of three hundred dollars (\$300.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for thirty (30) consecutive business days.
- d) The Board of Health reserves the right to revoke a Tobacco and Nicotine Delivery Product Sales Permit.

3. If a permit holder has obtained a permit or license from any other licensing or permitting authority within the Town of Arlington, the Board of Health shall notify such authority in writing of any violations of this regulation.

4. Refusal or failure to cooperate with inspections pursuant to this regulation may result in the suspension of the Tobacco and Nicotine Delivery Product Sales Permit for thirty (30) consecutive business days.

5. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco or nicotine delivery products directly to a consumer while his or her permit is suspended may be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days.

6. The Arlington Board of Health shall provide notice of the intent to suspend a Tobacco and Nicotine Delivery Product Sales Permit, which notice shall contain the reasons therefore and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefore in writing. After a hearing, the Arlington Board of Health may suspend the Tobacco and Nicotine Delivery Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. For purposes of such suspensions, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense. All tobacco products and nicotine delivery products shall be removed from the retail establishment upon suspension of the Tobacco and Nicotine Delivery Product Sales Permit. Failure to remove all tobacco and nicotine delivery products shall constitute a separate violation of this regulation.

R. NON-CRIMINAL DISPOSITION:

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D or by filing a criminal complaint at the appropriate venue.

Each day any violation exists shall be deemed to be a separate offense.

S. ENFORCEMENT:

Enforcement of this regulation shall be by the Arlington Board of Health or its designated agent(s).

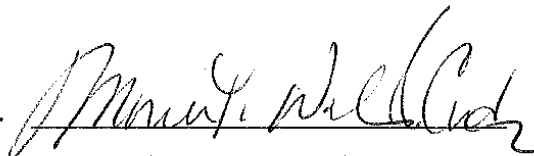
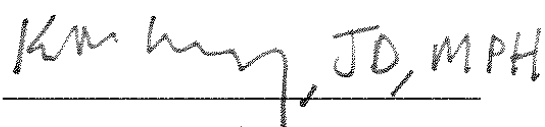
Any resident who desires to register a complaint pursuant to the regulation may do so by contacting the Arlington Board of Health or its designated agent(s) and the Board shall investigate.


T. SEVERABILITY:

If any provision of these regulations is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

U. EFFECTIVE DATE:

This regulation shall take effect on January 20, 2021.

1.  2. 
Marie Walsh Condon, MD Kenneth Kohlberg, JD, MPH

3. 
Kevin Fallon, DVM

Amended on 4/11/2018
Amended on 09/11/2013
Amended on 12/03/2014
Amended on 03/15/2015
Amended on 04/11/2018



Town of Arlington
Department of Health and Human Services
Office of the Board of Health

27 Maple Street
Arlington, MA 02476

Tel: (781) 316-3170
Fax: (781) 316-3175

September 12, 2022

DELIVERED BY:

CERTIFIED MAIL, RETURN RECEIPT REQUESTED:

USPS Tracking No: 7017 0660 0000 7895 2145

EMAIL: cynthiakohn89@gmail.com

Cynthia Kohn
184 Westminster Avenue
Arlington, MA 02474

RE: 184 Westminister Avenue #1 / Outcome of Board of Health Hearing July 13, 2022

Dear Ms. Kohn

At your request, a hearing to discuss violations of State Sanitary Code 105 C.M.R., §410.000: Minimum Standards of Fitness for Human Habitation ("the State Sanitary Code"), documented at 184 Westminister Avenue #1, was held with the Arlington Board of Health on July 13, 2022. The inspection was conducted in the presence of occupant Eva Collins on May 18, 2022 by representatives of the Health Department and Inspectional Services Department.

Background

In summary, the Health Department observed a violation related to the ceiling height in the dwelling unit (105 CMR 410.401) and the Inspectional Services Department (responsible for enforcing Massachusetts's Building, Wiring, Plumbing, and Fuel Gas Codes, as well as the Town of Arlington's Zoning ByLaws) conducted a records search to determine whether or not the property had been built as or converted into a two family dwelling unit. On June 15, 2022, the Health Department issued an order to correct the violation pertaining to the State Sanitary Code that had been observed on May 18, 2022. On June 6, 2022, the Inspectional Services Department issued a letter indicating that the Town did not have any records indicating the home was built as or converted into a two family dwelling unit, and therefore requested any such documentation in your possession be forwarded to Inspectional Services..

Relevant Hearing Testimony

During the July 13, 2022 Board of Health hearing, testimonies were heard from Health Compliance Officer Cameron Bishop, Attorney Scott Boccio representing the owner Cynthia Kohn, and the occupants of the unit Eva Collins and Katherine Dowling, as well as the owner of the property Cynthia Kohn. Attorney Boccio presented information to the Board stating that although they were awaiting written cost estimates for raising the ceiling height, they had a verbal quote in the range of \$50,000 to \$100,000. Additionally, Attorney Boccio presented the Board with information from the Town Assessors

Office which indicated that this property has been taxed as a two family dwelling unit dating back to 1992. As such, a request was made for the Board of Health to consider "grandfathering" this property as a two family dwelling unit.

Hearing Outcome

Dr. Marie Walsh Condon, Board of Health Chair, explained that authority to consider how a property is zoned does not fall under the purview of the Board of Health. However, the owner would have the ability to apply to the Board of Health for a variance from the State Sanitary Code requirement as it pertains to ceiling height, at a future meeting. Dr. Condon suggested that prior to applying for a variance from the State Sanitary Code that the owner work with the Inspectional Services Department to address the zoning concerns. Once that issue has been resolved, the next step would be to work with Health Department staff to determine the process for requesting a variance from the Board of Health. As such, the Board voted to table this hearing to a future date to be determined by the owner and Health Department Staff.

Current Status

On July 20, 2022 the Inspectional Services Department sent letter requesting that any documentation confirming when or how the property was legally converted to a two family dwelling be provided to the Department within fifteen days. In said letter, it was made clear that although the Assessor's website may indicate that the property is a two family dwelling, those descriptions are for informational purpose only. Approvals for two family dwelling units fall under the purview of Inspectional Services Department/Zoning Board.

To date, no additional documentation has been sent to the Inspectional Services Department and daily fining has been initiated. Therefore, the Board of Health would not be able to entertain a variance from the State Sanitary Code at this time. All issues related to the proper zoning must be resolved with the appropriate Departments prior to a request for a variance from the State Sanitary Code.

Questions related to this matter may be directed to the undersigned.

Sincerely,



Natasha Waden

Public Health Director

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nwaden@town.arlington.ma.us

cc: Arlington Board of Health Members
Inspectional Services Department